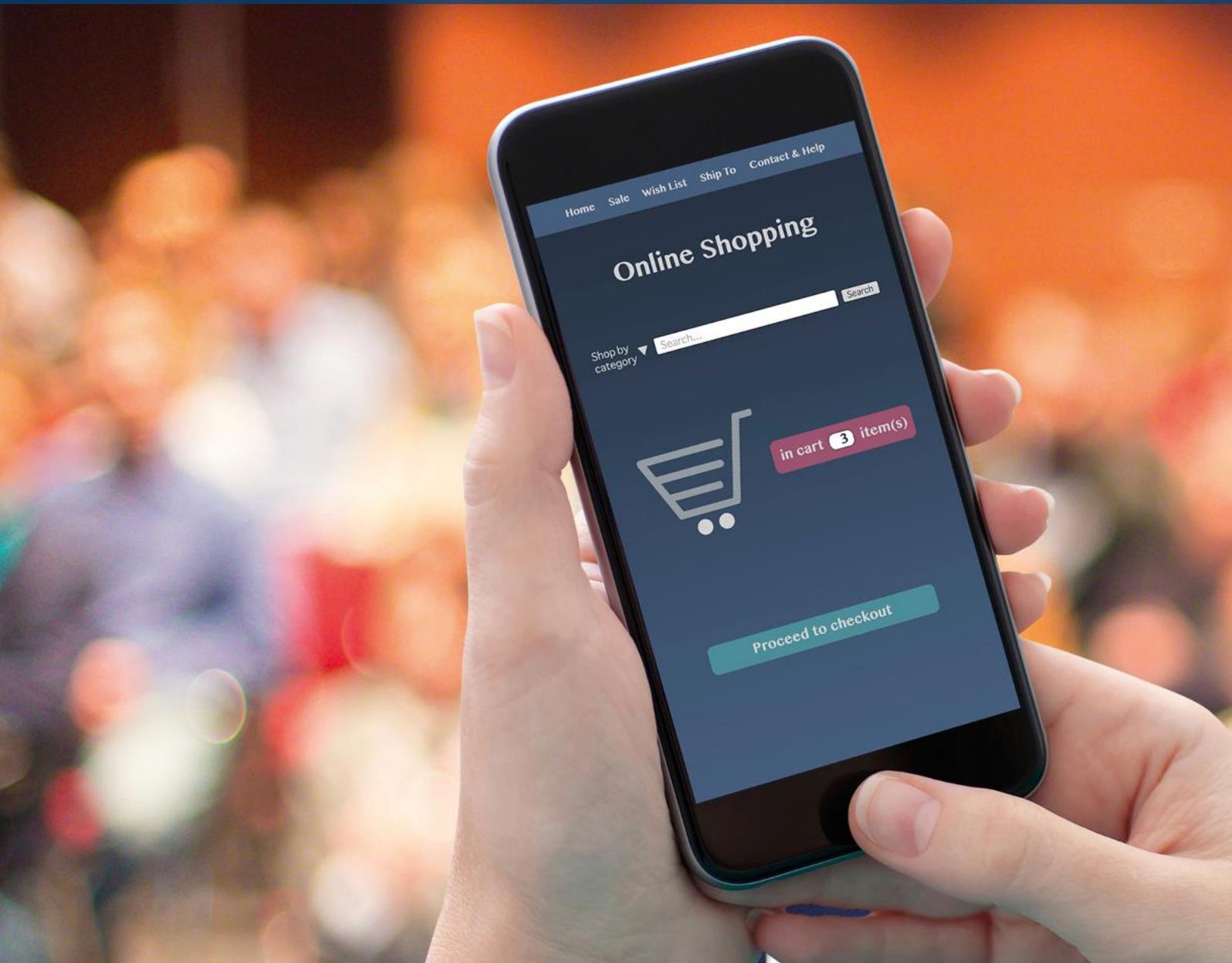


ECOMMERCE EUROPE MANIFESTO

Milestones to achieve a #DigitalSingleMarket

Policy and market solutions to boost cross-border e-commerce in the EU

June 2017



Introduction

Ecommerce Europe is the voice of the e-commerce sector in Europe. Through its 20 national associations, Ecommerce Europe represents over 25,000 online shops across Europe. Its mission: boost the e-commerce industry by helping decision makers shape policies fit for future sustainable growth. To do so, Ecommerce Europe takes initiatives to come up with innovative market solutions and provides a platform for expert discussion, connect online retailers with relevant stakeholders. It also highlights the importance of e-commerce to the economy through the provision of in-depth research on the European and global markets. Additionally, Ecommerce Europe stimulates the industry by developing initiatives like its [European Trustmark label](#).

The Digital Single Market strategy published in May 2015 has the potential to boost European e-commerce and this is a top priority for the European Commission of President Juncker. According to the Commission, a fully functional Digital Single Market could contribute €415 billion per year to our economy and create hundreds of thousands of new jobs. Having reached the middle of its mandate, the European Commission published in May 2017 a mid-term review of its Digital Single Market strategy. Since May 2015, the Commission has delivered 35 legislative proposals and policy initiatives, as announced in its strategy. The focus is now on obtaining political agreement with the European Parliament and the Council on the legislative proposals. Of these 35 proposals, some have a specific impact on online merchants and Ecommerce Europe ensures that the voice of the e-commerce industry is well heard during the whole legislative process.

Ecommerce Europe has been working together with all European stakeholders to rapidly remove remaining barriers in cross-border e-commerce. For policymakers, this entails supporting market initiatives, abolishing superfluous legislation and considering new regulatory structures when truly necessary, for instance in order to achieve a greater EU-level of harmonization. In fact, in Ecommerce Europe's opinion, full harmonization of legislative frameworks is the only way forward if the European Union wants to create a real Digital Single Market. Differing legislative frameworks across the EU, complicated VAT rules, logistics and payments related issues keep hampering the potential of cross-border e-commerce. The EU institutions are working on it and Ecommerce Europe supports the efforts of the policymakers in reducing barriers to online sales. However, Ecommerce Europe stresses that any new legislation should always be evidence-based and future-proof, in order not to hamper technological innovation.

With its Manifesto, Ecommerce Europe formulates market and policy recommendations including action points for policymakers, online merchants and e-commerce industry suppliers, with the aim of stimulating cross-border e-commerce.

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Recommendations on consumer and contract law

- Ensure full harmonization to create a real (Digital) Single Market for all B2C sales
- Simplify consumer rules to the benefit of e-merchants and consumers
- Support industry-led Trustmark schemes for B2C e-commerce
- Promote Alternative and Online Dispute Resolution

Ensure full harmonization to create a real (Digital) Single Market for all B2C sales

In a modern retail sector, a shop should be able to easily offer different sales combinations (online and offline/omni-channel sales, sales of tangible goods, services and/or digital content) without any unreasonable legislative burdens for traders. Ecommerce Europe supported the European Commission's Digital Contracts proposals on the sales of goods and the supply of digital content as a first step towards fully harmonized rules for consumers and merchants. However, the e-commerce sector still remains concerned about the level of harmonization that the co-legislators will accept.

Ecommerce Europe strongly believes in full harmonization of legal frameworks for cross-border sales in Europe and does not see any need for different provisions for online and offline sales. Therefore, aligning rules for online and offline sales is the only way forward, as a minimum harmonization approach will undermine the nature of the Digital Single Market and potentially foster "gold plating" practices by the Member States. Such a situation would only lead to more confusion and legal uncertainty because for the same product there will be two different levels of consumer protection.

Ecommerce Europe considers that it will be indeed easier and less burdensome for both traders and consumers to have one regime governing the sales of goods, services and digital content. The concept of conformity of the product, the remedies in case of defects, the hierarchy of remedies, the withdrawal from the contract in case of defective goods, the damage compensation, the legal guarantee period and a notification obligation should be the same for all B2C contracts, regardless of the subject of the contract, whether it is the delivery of a good, a service or digital content. Such a system, based on same rules, would also make the discussions on whether the product is a good or a service superfluous, together with the issue of the applicability of the digital content rules on goods with embedded digital content. Also for the sake of legal clarity, the legal guarantee should be based on a fixed period in time and not on a variable expected lifespan guarantee because, in practice, around 95% of the claims occur within two years after the delivery of the product and consumers would be more aware of their legal guarantee rights in case of an easy-to-understand fixed period.

Simplify consumer and contract rules

Consumers and merchants are often not fully aware of the legal aspects of their contractual relationship, because the applicable legal framework on consumer rights is too complex and tends to be fully understood only by legal specialists. The mandatory legal framework should enable the parties to focus on the main and basic characteristics of the contract, such as the identity of the trader and the consumer, the characteristics of the product or service, the price, delivery time, method, costs, payment, after sales services, complaint system, ADR/ODR and redress. Ecommerce Europe is strongly convinced that easy rules mean easy compliance, which means less costs and more legal certainty for the business. The first step towards this direction is ensuring a maximum level of harmonization.

Support industry-led Trustmark schemes for B2C e-commerce

Buyers are still wary of untrustworthy and unreliable traders. Loss of sales and falls in revenue are the consequences. A respectable trustmark can offer the opportunity to demonstrate to potential consumers that the online shop is trustworthy and that they comply with the law. Online traders with an online trustmark will stand out from the competition. In particular, Ecommerce Europe believes that a pan-European Trustmark scheme is a powerful tool to stimulate trust in online cross-border transactions and that, in a landscape with multiple trustmarks being developed, it is important that European legislators give their support to the most reliable and accessible schemes, such as the Ecommerce Europe Trustmark. The Ecommerce Europe Trustmark is non-profit and based upon self-regulation, and has been developed in close cooperation with national consumer organizations. Over 10,000 certified online shops in more than 10 countries can join the Ecommerce Europe Trustmark for free. The objective of the Trustmark is to stimulate cross-border online sales through better protection for consumers and merchants, by establishing one European set of rules and by ensuring clear communication on these rules. The Ecommerce Europe



Trustmark is the only pan-European trustmark with its own consumer-friendly complaints handling system and that is free for members of participating national associations.

The Ecommerce Europe Trustmark has a clear and recognizable label. By clicking on it, the consumer will be led to the Code of Conduct and a clear explanation of his or her rights and the commitments of the merchant. The Code of Conduct includes, for instance, the commitment of the merchant to be clear and transparent on the offer and prices before the consumer begins the order process, and the commitment of the merchant to offer the client transparent, easily acceptable and safe payment methods. The Code of Conduct is available at <http://www.ecommercetrustmark.eu>.

Promote Advanced Dispute Resolution and Online Dispute Resolution

Ecommerce Europe was closely involved in the development process of the European Online Dispute Resolution (ODR) system which is now accessible for both consumers and traders at the website <http://ec.europa.eu/odr>. When consumers have a problem with a trader regarding a product or service they bought, they can settle their dispute out-of-court through an Alternative Dispute Resolution procedure. Such procedures are an alternative to resolving disputes before the court and are hence called Alternative Dispute Resolution (ADR). When they are carried out online, they are called Online Dispute Resolution (ODR). Ecommerce Europe supports this platform because resolving disputes through ADR, in general, is easier, faster and less expensive than resolving disputes before the court.

With its own Trustmark, Ecommerce Europe has already developed an online complaint handling system in the language of the consumer, the "Trustmark Service Center", which complies with current EU legislation. Ecommerce Europe hopes that the ODR system, that has been accessible since 15 February 2016, will provide for a comprehensive, easily accessible, transparent, easy to handle and low-cost handling system that can be adopted and referred to in the Ecommerce Europe Trustmark system.

Recommendations on data protection and ePrivacy

- **Speed up the process of drafting guidelines for implementation of the General Data Protection Regulation (GDPR)**
- **Ensure consistency between the GDPR and the proposed Regulation on Privacy and Electronic Communications**
- **Improve the mechanism of consent for cookies and consent by browser settings in the draft ePrivacy Regulation**
- **Ensure an easy communication between merchants and consumers (unsolicited marketing communication)**

Speed up the process of drafting guidelines for implementation of the General Data Protection Regulation (GDPR)

Ecommerce Europe advocates for greater legal harmonization at EU level, the only way forward to truly boost cross-border online sales. That is why Ecommerce Europe always supported a regulation as a legislative tool to harmonize data protection rules across the EU. The GDPR will be applicable in less than one year and Ecommerce Europe has been vocal in the past months to further speed up the process of drafting guidelines for the implementation of the new data protection law.

Ecommerce Europe welcomes the opportunity for public comment on the guidelines for interpretation of the GDPR that are being developed by the Article 29 Working Party, which is made up of a representative from the data protection authority of each EU Member State, the European Data Protection Supervisor and the European Commission. Nevertheless, the drafting process and the consultations with stakeholders through *ad hoc* workshops organized by the Article 29 Working Party's FabLab have been delayed. Businesses need the time to properly implement the new GDPR rules and with the deadline of 25 May 2018, it is crucial to boost this process.

Moreover, Ecommerce Europe is particularly concerned about too extensive interpretations of provisions of the GDPR by the Article 29 Working Party, such as data portability, which are going way beyond the purpose of the regulation. Therefore, Ecommerce Europe urges policymakers and the Article 29 Working Party to speed up the production of guidelines in close cooperation with the business representatives and to ensure that they will be based on a uniform and balanced interpretation.

Ensure consistency between the GDPR and the proposed Regulation on Privacy and Electronic Communications

In January 2017, the European Commission proposed a new legislation to ensure stronger privacy in electronic communications, the Proposal for a Regulation on Privacy and Electronic Communications. Overall, Ecommerce Europe has always supported the idea of modernizing the current ePrivacy Directive, which is needed in order to make the ePrivacy legal framework fit for the future of online retail. Ecommerce Europe welcomes the choice for a regulation as legislative tool because it will achieve a higher degree of harmonization compared to a directive and it will reduce the risk of "gold

plating” from Member States. However, Ecommerce Europe has specific concerns regarding the proposed text. First of all, any overlap with the adopted GDPR should be avoided. Indeed, Ecommerce Europe sees a clear need to upgrade and to cover the existing rules on confidentiality of electronic communications, on access to the terminal equipment of the end-user and the information on it and on unsolicited commercial communications. However, Ecommerce Europe does not see any need to introduce new rules for the processing of data or personal data in the course of electronic communications, as this subject is sufficiently covered by the provisions of the well-balanced GDPR. In the view of Ecommerce Europe, there is absolutely no evidence for a need for special rules on data processing and privacy in electronic communications diverging from the GDPR and giving either less or more protection to data subjects than the level already provided by the GDPR. Instead of focusing on the processing of personal data and privacy aspects, which are sufficiently covered by the GDPR also for electronic communications, the Regulation should focus on the right on confidentiality of electronic communications.

Improve the mechanism of consent for cookies and consent by browser settings in the draft ePrivacy Regulation

A new element introduced by the ePrivacy proposal is that consent may also be given by appropriate technical settings of browser. Although Ecommerce Europe could overall support an opening of the consent mechanism to browser settings, it believes that the proposed provision does not represent the right solution to deal with the technical possibilities of giving appropriate approval or expressing consent for the use of cookies or the collection of information by browser settings. According to Ecommerce Europe, this restricted use of browser settings as a consent mechanism, makes this instrument only fit for standard cookies used in a standard way, due to the incompatibility of preset browser settings and the requirement of specified detailed information before explicit consent is given.

Therefore, Ecommerce Europe invites the European legislators to come up with a more practical solution to repair the impractical timeline for consent by browser settings caused by the prior specified information requirement. Moreover, browsers can be considered as gatekeepers of the terminal. Requiring browsers to prevent third parties from accessing the terminal equipment would have, as a consequence, that navigation software producers would become a power that is totally disproportionate to other players in the ecosystem over the Internet. In that perspective, Ecommerce Europe asks the European legislators to come up with provisions that prevent the major producers of navigation software to misuse browser setting consent systems to have a competition advantage or not complying with the European standards required by the GDPR.

Ensure an easy communication between merchants and consumers (unsolicited marketing communication)

As the consent mechanism for e-mail marketing in the proposed Regulation has not changed compared to the one in the current ePrivacy Directive, Ecommerce Europe strongly advocates that existing standards developed by the industry that meet the criteria of the Directive (as the UFMD appendix to code for the use of personal data in direct marketing by electronic communication) are recognized as also meeting the standards of the new Regulation, thus giving the industry the necessary comfort of not having to develop new consent standards.

Under the ePrivacy Directive, the use of electronic contact details received in the course of a sale or service contract for unsolicited direct marketing e-mails is restricted to marketing for own similar products or services. In practice, it is highly problematic to assess which products or services fall within the meaning of ‘similar’. Moreover, traders have to file which products or services they sold to

assess every time they sent a new unsolicited marketing e-mail whether they are allowed to do so without consent. This highly impractical proceeding is not only opposite to the GDPR obligation of data minimization, but it is also not well understood by customers, as they have a relation with the retailer and not with the good or service subject to the contract they concluded with the trader and, thus, expecting unsolicited offers on all the traders' product or services.

For the sake of simplicity and taking into consideration that the customer has always an easy and free of charge right to object (opt-out) unsolicited email marketing, Ecommerce Europe strongly recommends skipping the word "similar" from the text. This will allow the retailer to bring all his goods or services under the scope of this regulation, thus avoiding unnecessary data storing and complex discussions on what is meant by "similar products or services".

Recommendations on VAT related issues

- **Ensure the extension of the MOSS to the distance sales of goods, remove the current cross-border thresholds and replace it with a pan-European one**
- **Ensure the removal of the existing VAT exemption for the importation of small consignments from non-EU suppliers**
- **VAT and online marketplaces: a careful approach is needed**

On 1 December 2016, the European Commission published a package of legislative proposal to modernize VAT rules for cross-border e-commerce (the "VAT Package"). The VAT Package aims at delivering most of what Ecommerce Europe and its members have always asked for.

Ensure the extension of the MOSS to the distance sales of goods, remove the current cross-border thresholds and replace it with a Pan-European one

Ecommerce Europe is convinced that the Commission's proposal to extend the Mini-One-Stop-Shop (MOSS) - currently in place for electronic services only - to the intra-community distance sales of goods will have an extremely positive impact on e-commerce businesses. Ecommerce Europe has always advocated for such an extension because the current VAT scheme for distance sales is particularly burdensome for online merchants that want to sell cross-border in the EU. In fact, under the current scenario, EU online merchants exceeding specific revenue thresholds in distance sales to other EU member states - usually ranging from € 35,000 to € 100,000 - are required to register for VAT and file periodic returns in the latter EU member states. This is an extremely costly compliance environment for businesses. To address this issue, the VAT Package:

- extends the application of the MOSS to the distance sales of goods and, simultaneously,
- replaces the current thresholds with a single pan-EU threshold of € 10,000 for micro-businesses, below which the place of the supplies remains in the Member State where the supplier is established.

Ecommerce Europe welcomes the introduction of a single, uniform threshold for micro-businesses as it is convinced that it will make cross-border e-commerce even more attractive for small businesses. Ecommerce Europe is supporting the Commission's proposal of € 10,000 for the exemption threshold, provided that online merchants can rely on an extended MOSS, which will be easy to use, especially

for SMEs. Moreover, Ecommerce Europe supports the fact that the VAT Package includes provisions that will allow EU sellers to apply home country rules in areas such as invoicing and record keeping in order to make VAT compliance easier and less burdensome.

Ensure the removal of the existing VAT exemption for the importation of small consignments from non-EU suppliers

Currently, consignments with a value below € 10/22 supplied directly from non-EU countries to EU consumers are import VAT-exempt. This threshold was introduced as a simplification measure to avoid that too much time is devoted by customs administrations and economic operators in the customs clearance of low value goods. However, over time, the number of parcels benefiting from the exemption has increased dramatically. Accordingly, the exemption has become a source of complaint by EU businesses, which are in a competitive disadvantage towards non-EU businesses. Therefore, Ecommerce Europe welcomes the proposed solution of the Commission which envisages:

- The complete removal of the existing VAT exemption for the importation of small consignments from non-EU suppliers;
- A new import scheme for distance sales of goods in consignments of intrinsic value not exceeding € 150 from non-EU countries;
- The introduction of a simplified arrangement for global declaration and payment of import VAT when the new Import Scheme does not apply.

However, Ecommerce Europe calls on policymakers to ensure that truly effective and simplified procedures will be implemented in this context, in order to reduce the costs of levying the taxes for all parties involved. To this purpose, it is essential that the European institutions and the national authorities will consult the industry.

VAT and online marketplaces: a careful approach is needed

A growing share of cross-border online sales in Europe are carried out by merchants through their own stores on marketplaces. Under the most common solution, parties to the contracts of sale of products sold via a marketplace are only the seller and the individual consumer. The marketplace is not party to the sale, in the sense that the marketplace does not purchase the products from the seller for resale to customers. More and more frequently, sellers established outside the EU employ European-based facilities operated by third-parties to fulfil orders received on the marketplaces (warehouses, etc.). In these circumstances, goods sold on European marketplaces are previously bulk-shipped from overseas to the EU facility. Following customs clearance, the freight reaches the warehouse, where it is stocked in the wait for future B2C sales on the marketplace.

Cases of VAT abuse and non-compliance by overseas businesses importing goods sold via online marketplaces into the EU have widely been reported in various EU states. The systematic loss of VAT revenues on marketplace sales of foreign sellers has brought some EU states to consider the introduction of measures to prevent VAT evasion that make the marketplaces potentially liable for unpaid VAT. In Ecommerce Europe's opinion, unilateral measures to tackle VAT evasions on digital activities enacted by a single EU state are likely to foster harmful tax competition between EU countries. Ecommerce Europe believes that it is of utmost importance for the EU institutions to adopt a careful approach with regard to this discussion around different VAT collection models and the potential involvement of payment service providers, parcel delivery operators and online marketplaces. An in-depth impact assessment, supported by stakeholders consultations with the industry and their representatives should be launched before undertaking any actions.

Recommendations on parcel delivery

E-commerce is fundamentally changing postal and parcel markets. Global e-commerce streams revolutionize shopping, but the current parcel streams are ill-fitted to accommodate this. Almost one out of five EU citizens identifies cheaper delivery prices as the main improvement that would encourage more online shopping from sellers located in other EU Member States. Similarly, more than one third of online merchants consider higher costs of cross-border delivery compared to domestic delivery as an obstacle in online cross-border trade. Inefficient cross-border delivery is consistently in the top three of biggest barriers for online merchants to sell in another EU Member State.

- **Support Ecommerce Europe's achievements on open IT-standards for labeling**
- **Adopt a careful approach towards the scope of the draft Regulation on cross-border parcel delivery services**

Support Ecommerce Europe's achievements on open IT-standards for labeling

Ecommerce Europe's strategy on parcel delivery is to actively engage in shaping necessary market fundamentals through side regulation. Recently, Ecommerce Europe achieved a major milestone in innovating cross-border parcel delivery services. By chairing the work within the European Standardization Committee (CEN), Ecommerce Europe managed to harmonize postal and supply chain management standards to enable one item label for the delivery of merchandise to end customers. Merchants and consumers need a Pan-European delivery system with open standards for labeling and data interfaces to carrier data, in order to create more innovation and greater transparency in the logistics chain.

The positive final vote in CEN is a major step forward to really innovate cross-border parcel delivery services in Europe. One of the main causes of difficulties in parcel delivery was closed standards leading to proprietary networks, resulting in unfavorable market conditions for online merchants. By facilitating the work under a mandate of the European Commission, to specify harmonized Interfaces for cross-border parcels in Europe, Ecommerce Europe achieved a consensus involving all players in parcel delivery. It is. In this context, Ecommerce Europe calls on all relevant stakeholders, both from the policy side and the industry side, to support the work done by the association on standardization. This is the first time that closed networks and open specifications can be supported on one parcel label.

More information on the harmonized label can be found in the revised **Ecommerce Europe's Manifesto for a better parcel delivery market in Europe**, available [here](#).

Adopt a careful approach towards the scope of the draft Regulation on cross-border parcel delivery services

High European delivery performance is a key driver for success for web merchants and their business models. Additionally, more options are needed, including different offers, alternative affordable delivery options, more flexibility, more information and greater transparency from delivery service providers. In light of this, Ecommerce Europe welcomes the publication of the European Commission's Proposal for a Regulation on cross-border parcel delivery services. Ecommerce Europe believes that the original proposal had the potential to help create a level playing field for competing parcel delivery operators

and thereby - ultimately - for online merchants throughout Europe. Nevertheless, given the more recent legislative developments, Ecommerce Europe has specific concerns regarding the draft Regulation, namely on the potential extension of the scope to other parties (e-merchants).

Some modifications proposed in the Council's texts of the past months proposed a new recital (8a). This recital is also included in a Council document dated 31 May 2017. The proposed Recital 8a will enlarge the regulatory oversight to all those e-commerce retailers which are "drawing on the collaborative economy and e-commerce platforms". In the case of Germany and other European Member States, this would potentially require e-commerce companies to register or even apply for a postal license. In Ecommerce Europe's opinion, this is going far beyond what the Commission really wanted to achieve and will result in another additional hurdle and administrative burden on the e-commerce industry, which is something that Ecommerce Europe strongly recommends avoiding.

Recommendations on e-Payments

- **Further revise the EBA's RTS on Strong Customer Authentication to preserve online merchants' business models**
- **Facilitate interoperability of payment systems between all Member States and all online devices**
- **Safeguard market newcomers' access to banks' customer data**
- **Support developments in pan-European electronic Identification schemes**

Further revise the EBA's RTS on Strong Customer Authentication

Ecommerce Europe welcomes the European Banking Authority's acknowledgement, under Article 16, of the crucial role Transactional Risk Assessments of electronic payments play to the business models and the competitiveness of online merchants. As a technologically neutral alternative to fighting online fraud, transactional risk-based assessments allow online merchants and their Payment Service Providers to adapt to new and evolving parameters and fraud patterns, while ensuring the high level of check-out convenience European e-commerce shoppers have become used to.

However, the required Reference Fraud Rates under Article 16.2(a) are set too stringent, not in line with market realities and in contradiction to the PSD2's competition objectives. In their current form, the required percentage rates will effectively push a significant number of electronic payment transactions to having to undergo Strong Customer Authentication, thus voiding the concept of Transactional Risk Analysis as an exemption.

The currently proposed 3-tiered Reference Fraud-rate levels of 0.13%, 0.06% and 0.01% for €100, €250 and €500 respectively, do not account for the greatly varying fraud levels between different EU countries, e-commerce industry sectors and online merchant profiles. This continued-one-size-fits-all approach proposed by the European Banking Authority, therefore will continue to prove inadequate in the ongoing fight against online fraud, while disproportionately impacting upon low-risk transactions through the forced application of Strong Customer Authentication to European SMEs.

Furthermore, Ecommerce Europe calls on European policy makers to expand the application of

Transactional Risk Assessment to online merchants and their Payment Service Providers. According to the RTS, the payer's Payment Service Provider will have the "final say" whether Strong Customer Authentication or Transactional Risk Assessment will be triggered.

Online merchants often have access to more and higher quality customer history, tracking and identification data to assess transactional risk than third-party Payment Service Providers. Facilitated by increasingly sophisticated data analytics, online merchants today can efficiently, and in real-time, track and analyze the fraud-risk of an individual customer. Online merchants should be free to choose their preferred electronic payments authentication technique if they provide an equally high level of payment fraud protection as Strong Customer Authentication.

In any case, the draft RTS' provisions for the payer's Payment Service Provider to have the final say on the application of Strong Customer Authentication is not in line with Article 97 of the Payment Services Directive 2 and should be expanded to provide the payee's Payment Service Provider with equal decision-making powers for the triggering of Transactional Risk Assessment. Furthermore, by having a say in the final decision on the application of Transactional Risk Assessment, the merchant's Payment Service Provider has an economic incentive to improve its Reference Fraud Rates for a given electronic payments instrument.

Facilitate interoperability of payment systems between all Member States and all online devices

The fast pace of mobile (m-)commerce growth is helping to drive the overall growth in the e-commerce sector. Ecommerce Europe urges European policy makers to facilitate this growth in their design of all payments-related policies. To foster cross-border trade, interoperability between payment systems of Member States is essential. There should be an integral approach to the payment systems market to produce future-proof legislation. Regulatory action should only be undertaken where the market itself is unable to come up with integrated solutions.

In light of the European Commission's proposals on geo-blocking, Ecommerce Europe calls on European policy makers to facilitate the highest level of harmonization of electronic payment systems between Member States. In a fragmented market of competing and non-compatible electronic payment systems, obliging European online merchants to offer equivalent electronic payment options in each targeted market is too high a burden to online merchants, particularly for SMEs.

Innovative payment solutions provide both online merchants and consumers with more accessible, cheap and secure payment solutions, leading to an improved customer check-out experience and improved conversion rates. To enhance competition, a standardized application programming interface (APIs) framework for banks is crucial. This gives room for the market to focus on innovation by removing integration issues. Ecommerce Europe calls on European legislators to closely engage with the technical expertise of the Euro Retail Payments Board to develop specific industry standards to prevent the further fragmentation of the electronic payments landscape.

Ecommerce Europe welcomes mobile wallet solutions as a valuable addition to the electronic payments landscape, as long as they are accessible to a large number of consumers, offer excellent usability, and costs are in balance to their added value and calls on legislators to acknowledge the potential of mobile wallet solutions by providing for more harmonization, accessibility and clarity regarding the legal framework, fee structure and chargeback rights.

Safeguard market newcomers' access to banks' customer data

Third-party Payment Providers (TPPs), one-click-buy options, wallet solutions and other innovations can accelerate product development and stimulate cross-border purchases, if they adhere to the same security standards that regular merchants provide. Innovations in online banking solutions should be stimulated, as they can facilitate mobile payments and merge online, offline, cloud, and P2P payments.

To ensure the success of market newcomers in the electronic payments landscape, and provide customers with the highest level of check-out convenience, it is important for these innovative online banking solutions to have adequate access to both the data held and the personal security features applied by account servicing payment services providers, such as banks and similar financial institutions. Ecommerce Europe urges policy makers to demand adequate communication by the issuing banks and third parties developing the services, and to ensure open, interoperable and secure standards for APIs to facilitate fair competition and a level playing field between market newcomers and established players.

Support developments in pan-European electronic Identification schemes

Ecommerce Europe believes that the mutual recognition and interoperability of national electronic Identity schemes could provide a significant boost for security, convenience and trust in the European cross-border e-commerce market. For merchants, it is fundamental to verify the identity of the consumer for many reasons. Having e-Identification schemes based on real IDs verified by governments or other trusted parties would greatly assist in the fight against, and reduction of, cybercrime and fraud. In addition, it would allow for effective age verification - which would be useful for age-dependent services such as online gambling or certain products or services. For consumers, properly functioning and reliable e-Identification can help secure their online identities and will increase trust and convenience in (cross-border) online shopping.

Ecommerce Europe calls upon national governments to encourage the development of interoperable electronic identity schemes, and to notify the European Commission of national e-Identification schemes in order to move towards a mutual pan-European recognition and acceptance.

Other recommendations on cross-border e-commerce

Ensure that the Geo-blocking Regulation will not put at risk online merchants' right to economic and contractual freedom

Ecommerce Europe has always had a constructive approach towards the Proposal for a Regulation on geo-blocking. The work done by the Rapporteur of the European Parliament, MEP Roza Thun, contributed to improve many parts of the text that created concerns for online merchants. Ecommerce Europe welcomes the fact that many MEPs were supportive of our recommendations and that some of them were retained in the text adopted by the IMCO Committee of the European Parliament on 25 April. Ecommerce Europe listed the positive elements of the IMCO report and the remaining concerns:

Positive elements of the IMCO text adopted on 25 April:

- No obligation on online merchants to deliver all over the EU
- **Applicable law:** the report improves the original Commission's text by making it clearer that a merchant who allows access to his website or accepts payment means from consumers is not automatically deemed to be targeting these consumers. Furthermore, a merchant who undertakes reasonable steps to provide assistance to consumers is also not deemed to be targeting. All these clarifications can increase merchants' legal certainty and allow them to provide for a good level of customer service without risking that this would be seen as a targeting activity.
- **More certainty regarding legal compliance:** online merchants do not need to comply with the laws or to use the language of the Member State where the merchant does not intend to sell.
- **Payments:** there are stronger safeguards regarding payments, which respect online merchants' freedom to offer payment means of their choice and limit the risk of fraud or non-payment, for example by allowing the merchants to withhold the shipping of the goods until they receive the payment

Remaining concerns in the IMCO text:

- **Explicit consent for rerouting:** online merchants must seek consumers' explicit consent for rerouting them to another version of their website. However, consent can be given only once, in other words the merchant should not seek consumers' consent when they visit the same website again. Unfortunately, this is a sub-optimal solution, as Ecommerce Europe advocates for the removal of explicit consent before rerouting from the text, in order to give a better shopping experience to the consumer.
- **Applicable law:** In theory, merchants that do not mean to sell to other markets and just comply with the Regulation can apply their own laws. Also according to other EU business associations, the way this provision will work in practice is not very clear. Unfortunately, the pragmatic solution proposed by MEP Thun in her draft report was not retained. The Rapporteur had proposed having merchants clearly stating on their websites which countries they target and, for the sales to these countries, which consumer law would apply. Such a solution was supported by Ecommerce Europe.
- **Additional costs of shipping:** the IMCO text is unclear regarding additional costs of shipping for returned or non-conform goods. The Council's General Approach requires the merchant to cover only the cost of returns from the country to where he delivered the goods. As a consequence, Ecommerce Europe keeps supporting the Council's position to avoid extra burdens for merchants related to transportation costs beyond the point of delivery agreed when the sales contract was concluded.

Overall, Ecommerce Europe insists on the fact that it is of utmost importance to achieve a greater level of harmonization in order to effectively reduce geo-blocking. Full harmonization of EU legal frameworks will increase legal certainty and allow merchants, especially SMEs, to sell more abroad without the fear of breaking different laws of other countries. Harmonization at a minimal level will only increase the risk of “gold plating” by Member States, which will lead to a fragmented framework hampering to growth of cross-border e-commerce.

Ensure that the Accessibility Act Directive will not impose unreasonable burdens on the e-commerce industry

In December 2015, the European Commission published a Proposal for a Directive on the approximation of laws, regulations and administrative provisions with regard to the accessibility requirements for goods and services (the European Accessibility Act). Ecommerce Europe welcomes the objectives of the proposed legislation, and strongly supports the principle of accessibility as a means of promoting the inclusion of disabled people in society.

Despite this, Ecommerce Europe views the Commission’s Proposal as deeply problematic in several key ways, and in particular, fears the impact that the proposal would have on the e-commerce sector. Firstly, the Proposal has failed to take into account the considerable work that is being done by the private sector in order to improve the accessibility of goods and services to disabled people. In particular, the e-commerce sector has done a great deal to enhance the access of disabled people to goods and services. This contribution to accessibility made by the private sector and the e-commerce sector specifically should be taken into account by the legislation.

The proposal creates an overall obligation for e-commerce firms to provide for accessibility for all categories of disabled people that will result in very high burdens of compliance in relation to, for example, audiovisual requirements, which will prove particularly problematic for SMEs. The extent of these compliance burdens has been evidenced by a study on the implementation costs of the Act for online merchants, conducted by three German associations, including Ecommerce Europe’s German national association, Händlerbund.¹ Meanwhile, the provisions in the current Proposal for exemptions from the legislation are themselves highly burdensome for businesses and, in Ecommerce Europe’s view, would prove highly difficult to meet, especially for smaller online merchants.

The report of Rapporteur MEP Morten Løkkegaard, adopted by the IMCO Committee of the European Parliament on 25 April, has definitely improved the Commission’s proposal, even though some provisions could be further improved. For instance, there is only an exemption scheme from the Act for microenterprises only. SMEs can benefit from a derogation if adapting the website to fulfill accessibility requirements would be disproportionate. However, the derogation scheme remains too complex and Ecommerce Europe calls on policymakers to further simplify the derogation scheme for SMEs.

¹ For more information, please see the study conducted by Händlerbund, bevh, and Bundesverband Onlinehandel, entitled *Implementation of the accessibility requirements of the Web Content Accessibility Guideline 2.0 according to the Directive COM(2015) 615 final 2015/0278 (COD)*, available upon request to info@ecommerce-europe.eu.



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