

E-commerce, omni-channel retail, and EU policy

OUR MANIFESTO 'SHOPPING FOR GROWTH'

EuroCommerce recently launched its manifesto 'Shopping for Growth'. The manifesto captures our main policy proposals for the next EU legislature 2014-2019:

- a digital policy that helps retail and consumers in the digital age;
- a plan for European retail and wholesale competitiveness and more open markets;
- a voluntary approach to fair relations with suppliers and to sustainability.

This policy guidance paper provides more details on our digital policy and competitiveness proposals.

INTRODUCTION

E-commerce is a major, sometimes disruptive, driver of change in the world of retail and wholesale, and in that of the consumer. It offers major new opportunities in many sorts of ways for businesses which serve consumers. Consumers themselves, with their increased use of the computer and of mobile devices such as tablets and smartphones, are changing dramatically in terms of behaviour and expectations as shoppers. For traders, e-commerce offers new ways to interact with their customers and to serve them through different channels and platforms.

As often, these significant market changes (in the way consumers shop, and in the way retailers meet or anticipate consumer expectations) are ahead of policy and legislation. However, there are many laws that will impact, positively or negatively, on online commerce.

The purpose of this paper is to review several aspects of e-commerce and its development across the EU, in particular, but not exclusively, cross-border trading issues, in relation to the existing or missing EU legislation. It offers a number of specific recommendations, some relating to ongoing discussions on draft legislation, others on proposals that may arise, others still on the longer-term policy direction. Those policy recommendations are included in our 'Shopping for Growth' manifesto for the 2014-2019 legislature.

We trust that this paper may set out some ideas and inform the policy debate. We are looking forward to feedback from any interested parties.

I. E-COMMERCE, M-COMMERCE AND OMNI-CHANNEL RETAIL

The growth of the internet and the power of the digital economy have opened new ways for consumers to shop. New businesses have developed which specialise in offering and taking orders via the internet and through distance selling. The term electronic commerce or e-commerce was coined. For the last 15 years, the three key dimensions of retail presence have been physical stores, mail or telephone order via call centres, and online via web stores. More recently, with the growth and universal spread of mobile devices such as smartphones and tablets, a fourth and rapidly expanding channel has been added: m-commerce, for mobile commerce.

Although each channel retains the unique characteristics that compel customers to engage with it – be that a specialized or expanded merchandise assortment, a compelling and informative visual presentation, the on-demand nature of a channel, or the ability to touch, try out and immediately take home your purchase – all these channels share certain criteria that the consumer expects. They all blend in a seamless, omni-channel consumer experience. As a result, retail and wholesale is transforming itself, with the emergence and development of new so-called pure play e-commerce operators, the mutation of mail-order-catalogue companies into e-commerce companies and the rapid evolution of traditional bricks-and-mortar retailers and wholesalers into true omni-channel retailers.

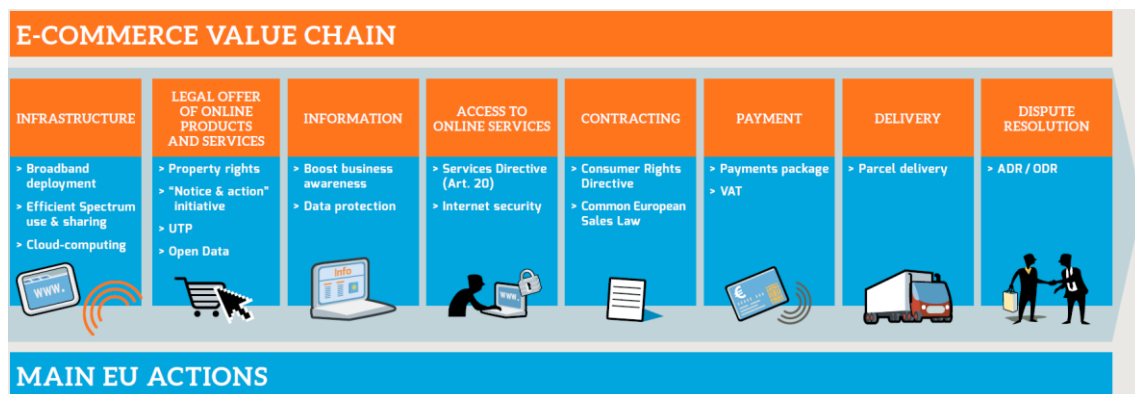
The rapid evolution of e-commerce is shown by the numbers: in 2012, EUR 277bn goods and services were bought by consumers online, an 18% growth over the year before. These numbers represent a small percentage (3.5%) of all B2C sales, but in some leading countries such as the UK, it is already 12%. An external estimate quoted in an official EU Commission document has suggested that if e-commerce were to grow to 15 per cent and single market barriers eliminated, consumer welfare gains could total EUR 204bn, 1.7% of EU GDP. Interestingly, 70% of current online sales are derived from omni-channel retailers.

By 2020 retail will have changed dramatically – driven by consumer demand and by technological advances – irrespective of any policy direction. Among the changes are:

- Greater diversity of the business offer including formats, product ranges and, increasingly, services;
- Significant development of digital commerce, including multi-channel and mobile;
- More sophisticated and personalised communication with the consumer;
- Greater accessing of international markets by consumers and by businesses to source products, particularly facilitated by e-commerce;
- A requirement for different types of jobs and skills;
- Greater focus on sustainability and resource efficiency;
- A different physical footprint in towns and cities driven by consumer choice in accessing new forms of retail;
- A need to address the needs of a growing number of ageing consumers;
- Considerable cuts in public spending on consumer education and protection.

II. EU POLICY RESPONSE TO CHALLENGES AND BARRIERS FOR CONSUMERS AND COMMERCE

The EU has recognised that online retailing and wholesaling has the potential to drive forward growth and jobs in Europe. It has made the Digital Agenda and e-commerce important pillars of its 2009-2014 strategy. EuroCommerce supports the Agenda. In particular, our sector wants to see the completion of a real Digital Single Market. We want to see one borderless single market for omni-channel retail, so consumers have a wider choice of goods, whether by shopping at home or across borders using online channels. Today, however, obstacles still prevent cross-border e-commerce from fulfilling its full potential.



After Harrie Temmink, European Commission, July 2013

1. WHAT ARE THE BARRIERS AND CHALLENGES EXPERIENCED BY COMMERCE AND CONSUMERS ?

Trust

Individual consumers and their representative organisations have all raised issues of lack of familiarity and **trust** with a new channel that makes the merchant distant and faceless. In a digital environment and with distance selling, establishing trust can be more difficult than in a physical environment where there is more direct person-to-person interaction between buyer and seller. This poses a challenge for consumers in determining whether the e-commerce company is trustworthy.

By the same token, retailers and wholesalers also need to know whether their customer is trustworthy, particularly in terms of payment. Merchants are also hesitant to move into the digital channel because they lack trust and clarity in the legislative framework, particularly if they want to deliver cross-border.

With trust being at the basis of every decision made, it is essential that merchants and consumers have mutual trust. For consumers this means:

- getting the product or service they meant to buy;
- delivered as promised;
- at the quality, safety, and price that was promised;
- paid with a payment method that is fair and safe;

- with clarity and simplicity of use rights;
- with clarity on how the data they leave behind is being used;
- with clear guarantees;
- with easy access to an opportunity for mediation, arbitration, and redress;
- in a language they understand.

For merchants, this means:

- regulations and requirements (incl. in particular consumer legislation) are unambiguous, clear, and reasonable;
- payment methods are fair, safe and guaranteed;
- consumers respect their rights as well as their duties;
- redress is proportionate to the claims and damages;
- their freedom to trade or not to trade is respected;
- safe and reasonably priced delivery service.

To deliver his share of the deal, the retailer must always be sure about his legal obligations. He must be able to ascertain that the products or services offered are in compliance with EU-law; to make available information requirements in an understandable and sensible way; to trust that every payment is genuine and safe and that no unjustified or excessive costs can be imposed by public authorities or other economic operators and he must always be able to rely on independent and cooperative public authorities.

Business and market barriers

European businesses operate, and consumers live, in an environment where the diversity of culture, tradition, lifestyle, and language is a source of richness. At the same time, this diversity generates differences in requirements, and, therefore, barriers that prevent businesses from enjoying the benefits of a real, large, single, EU market. In turn, consumers are deprived of benefits enjoyed by consumers in neighbouring countries. Any differences in rules and regulations should only be justified on truly objective grounds.

Barriers that are unintended or unjustified should be removed. It is unacceptable, for example, that to be fully compliant one retailer needs 28 different websites with 28 terms and conditions. Or that, to trade online cross-border he must have a brick-and-mortar presence in other member states, due to VAT ,establishment or waste collection rules.

Further barriers to the development of e-commerce or omni-channel retail persist because existing legislation was designed in the age of brick-and-mortar retail and wholesale, or to cater for different forms of distance or direct selling. Some legislation is therefore no longer fit for the diversity of commerce business models in the digital age.

Infrastructure and skills

For e-commerce and omni-channel retail to flourish throughout the EU, improving mutual trust and breaking down barriers are not enough. The last category of challenges hindering the development of the full potential for this new channel of commerce is **infrastructure and skills**. Even if and when all barriers related to product regulation, taxation, consumer rights, payments, crime, etc. are removed, retailers, wholesalers and also consumers need a modern

ICT infrastructure and people with the right skills across Europe. A number of important flanking policy measures that fall outside the scope of policies immediately relevant to retail and wholesale, need to be decided upon and implemented.

Today, broadband penetration in Europe is still too low. There is a lack of implementation of new technologies such as 3G and 4G and a lack of new competitors (mobile virtual network operators, parcel operators, etc.). There are different standards for ICT networks or electrical equipment (plugs). Finally, there is a shortage of skills and proper education programmes to ensure that every European citizen is comfortable in the digital environment and businesses find the right talents easily.

2. WHAT CAN POLICY-MAKERS AND LEGISLATORS DO ABOUT THESE BARRIERS ?

Legislation can be the root cause of the barriers, but it can also be a solution. There are three main types of legislative misalignments:

A. EU legislation and policy: unfit or lacking

Some legislation is out of date. It is no longer in line with the current and future business environment and the digital economy. Or it creates a bias and competitive advantage for one channel over another. Think of legislation around taxation, labour conditions and employment, privacy and data protection, product return, sales conditions, parcel delivery, labelling and information requirements online, payments, handling waste, and cybercrime. In other areas, there is either a lack of legislation or a late development of legislation fitted to the digital way of doing business and shopping. Think of electronic signature and authentication or return policies for deliveries thousands of miles away from the store.

B. National legislation: different or additional requirements, divergent implementation of EU law.

In some areas, European legislation is absent or there is only minimum harmonisation legislation. National legislation is then predominant with, as a result, very different and divergent requirements when you compare one country to another. In other cases, legislation is gold-plated at national level to serve particular interests. This hinders businesses from exploring and discovering new markets. Examples are guarantees for consumers, labelling, testing and information requirements in general, consumer contract law, different taxation regimes, etc.

C. Technical standards for products or ICT (primarily national)

Many obstacles to trading cross-border relate to differing national technical standards (the extension of national legislation) for products sold by merchants or for ICT.

III. CALL FOR POLICY AND LEGISLATIVE ACTION

Policy and legislative action can address some of these root causes. Depending on the root cause, action would be needed either at EU level or, quite often, at national level. In the latter case, EU action can help, either by strengthening legislation or by the open method of

cooperation (OMC, the soft approach of EU progress by bringing Member States together for benchmarking against best practices and alignment).

Retail and wholesale need action to address the obstacles in the three main areas: trust, market barriers and infrastructure and skills. These actions are listed below. A **detailed annex** provides more contextual information and a clear recommendation for each of these requested actions.

1. BOOSTING CONSUMER & BUSINESS CONFIDENCE IN E-COMMERCE

- 1.1. Implement the Consumer Rights Directive; regulate missing elements, such as unfair contract terms and guarantees, on a fully harmonised but reasonable and balanced basis.
- 1.2. Data protection and privacy – a balance between the citizens' right to privacy and the rights of businesses to capture data to optimally serve consumers.
- 1.3. Consumer access to balanced redress at the appropriate level – a recognition of the effective redress procedures already in place, but also with the Consumer Protection Co-operation Regulation.
- 1.4. Standards and performance criteria for market-based instruments (e.g. legitimate and unbiased review sites, accurate comparison websites, effective and robust trustmarks).
- 1.5. Fair and safe payment systems – payment systems that are cheaper and more competitive.
- 1.6. Combat fraud and cybercrime.
- 1.7. Freedom for a business to trade or not – Art. 20 (2) Services Directive.

2. REMOVING BARRIERS TO E-COMMERCE

- 2.1. 'E-fairness' and an omni-channel test for all legislation applicable to retail and wholesale to ensure: 1) a level-playing field among all channels; 2) fitness and adaptation to the new online channels and 3) facilitation of cross-border trading online .
- 2.2. Harmonise product requirements (technical, testing, labelling and information, etc.); mutual recognition by one authority of the product requirements complied with in another country; deal with national legislation or transposition of EU law which cause problems.
- 2.3. Effective parcel delivery and postal markets.
- 2.4. Payments in cross-border e-commerce.
- 2.5. Harmonise and simplify VAT rules.
- 2.6. Suppliers' territorial or channel restrictions.

3. IMPROVING ICT INFRASTRUCTURE AND E-SKILLS

- 3.1. Roll out of 4G and broadband - a single telecoms market - harmonise ICT standards.
- 3.2. Ensure people have the right e-skills to use the internet (social inclusion) and to provide the necessary talents for e-businesses (jobs and enterprise creation).

- 3.3. Push for more use of digital processes in regional, national and EU government and administrations (e.g. tax and VAT returns, product information).

IV. PRIORITIES IN TWO PHASES

The key recommended actions are included in our 'Shopping for Growth' manifesto for the 2014-2019 legislature. Some require near-term actions, sometimes with a legislative process already engaged, whilst others are longer-term goals. To help the policy-makers, we offer the following prioritisation:

1. IMMEDIATE ACTIONS ON MOST PRESSING ISSUES (2014-15)

- Adopt 'e-fairness' and a level playing field, and introduce an omni-channel test (#2.1), as well as measures to support high-street shops to adapt to the digital age.
- Develop a one-stop shop for e-commerce/omni-channel commerce operators to support businesses in entering or adapting to the digital economy; such (digital) one-stop shops should contain user-friendly knowledge about EU and national:
 - o consumer protection rules;
 - o VAT rules;
 - o administrative cross-border requirements;
 - o product testing, information and labelling requirements;
 - o best practices on how to enter into or adapt to e-commerce.
- Finalise/approve the payments package to ensure safe, fair, effective, and competitive, cross-border payments (#1.5 and #2.4).
- Create legal certainty on the freedom to trade or not to trade – Art 20.2 of Services Directive (#1.7).
- Help deliver affordable and reliable parcel delivery services (#2.3).

2. MID-TERM ACTIONS (2016-2019)

- Harmonise product requirements and/or apply mutual recognition (#2.2).
- Deal with cyberfraud (#1.8).
- Ensure harmonised and balanced consumer rights (#1.1 to 1.4).
- Improve the situation on VAT (#2.5).
- Improve ICT infrastructure and e-skills (#3.1 to 3.3).

In conclusion, European and Member State legislators have to be visionary and decisive to shape the right policy and legislative environment for the future of commerce, for the benefit of retail, wholesale and consumers alike. EuroCommerce and its members want to be engaged with policy-makers at all levels and in all institutions to help shape this environment.

ANNEX : EU POLICY CONTEXT AND SPECIFIC RECOMMENDATIONS

1. BOOSTING CONSUMER & BUSINESS CONFIDENCE IN E-COMMERCE

1.1. CONSUMER RIGHTS, CONTRACTS, AND GUARANTEES

The EU has recently adopted the Consumer Rights Directive, which fully harmonises some key areas of e-commerce transactions (e.g. pre-contractual information, formal requirements for contracts, the right of withdrawal, delivery, the passing of risk, etc.) but not all (e.g. guarantees, especially for defective digital contents). The Directive will be implemented this year and operational by mid-2014 across all Member States. This new European law will significantly facilitate cross-border online commerce for businesses, while providing robust protection standards and thus prompting greater consumer confidence in online commerce. It is important to support this process and to assess the implementation a few years down the line.

Recommendation 1: Priority one should be the thorough implementation of the Consumer Rights Directive. The Commission should report on the assessment of the CRD in 2016, taking into account the ongoing development of guidelines, which should clarify some ambiguous provisions of the Directive.

Consumers and traders must be able to engage in e-commerce on the basis of certainty. At present the diverse regimes on the legal guarantees in the 28 Member states is a major disincentive to cross-border online and offline selling. In particular, SMEs suffer most from this lack of harmonisation. Model contracts and a Common European Sales Law (CESL), have been proposed as alternative, respectively by consumer organisation BEUC and by the European Commission. EuroCommerce is supportive of a voluntary second regime in the European Union next to the one of the Member States. However, the regime will only be useful if it is balanced between the rights and obligations of consumers and businesses in the different Member States. Unreasonably high standards will not encourage businesses to make use of it; too low standards will make it unattractive for consumers. Therefore, a fully harmonised directive with reasonable guarantees is far better.

Recommendation 2: With the knowledge of the implementation of the Consumer Rights Directive, the EU should deal with remaining uncertainties and non-harmonised aspects of contractual arrangements, such as guarantees, with a fully harmonised Directive, balancing the rights and obligations of both consumers and businesses.

1.2. DATA PROTECTION AND PRIVACY

Privacy is a highly valued right in Europe. So are property rights. These are well understood and shared by consumers and retailers/wholesalers. Retailers and wholesalers keep the information that is essential to their operations and to their competitive advantage as highly

confidential. This includes information about their customers. To deliver good services and meet consumers' expectations, retailers need to know their customers and their preferences. To ensure delivery of the right product at the right time and avoiding waste, retailers and wholesalers have, over the years, developed very sophisticated systems to manage data about products, stocks, logistics, and consumers. With the advent of the internet, the capture of data has become easier but also more sophisticated. Consumer profiling has become much more detailed. With the internet, some data are given with explicit consent, others are gathered with less obvious consent. The existing Data Protection Directive has been implemented differently in different Member States. The proposed Data Protection Regulation¹² aims to remedy this. It should strike the right balance between the respective interests of consumers and businesses. It should not prohibit businesses' legitimate commercial or legal reasons to use them. The proposal has also still some unclear definitions that need improving.

Recommendation 3: The EU regulation should enable retail, wholesale, and trade to continue being able to use data to deliver efficient value chains and meet consumers' expectations.

1.3. ACCESS TO BALANCED REDRESS

Customer satisfaction is the most important driver of retailers' and wholesalers' success. Therefore, retailers and wholesalers pay attention to satisfy their customers all the time. In the rare cases where customers are not satisfied and a dispute arises, these are mostly resolved between retailers and consumers bilaterally. For the very few cases where they do not, consumers have access to a wide range of redress mechanisms. These are regulated by a number of EU legal instruments : the recently adopted Directive and Regulation on ADR/ODR (Alternative Dispute Resolution and Online Dispute Resolution), the European Small Claims Procedure, and the Mediation Directive. These are complemented at Member State level by national laws and systems for mediation, arbitration, and, in some cases, collective redress. In general, these provide a right balance between the protection of the consumer and the operational flexibility and the freedom of the merchant. These existing redress mechanisms are underused because they are not well known, neither by merchants, nor by consumers, or because they may be expensive.

Recommendation 4: The Commission and the Member States must promote existing redress arrangements to increase trust and increase dispute resolution throughout the EU. Retailers and wholesalers should also play their part in this awareness-raising.

1.4. MARKET-BASED INSTRUMENTS

With the digitisation of the economy and the gathering of data, a number of online-specific instruments are being developed that aim to provide consumers with better information about the products and services they want to buy, their comparative prices and qualities, the merchants that are offering them, and the opinion of customers who have bought them. These instruments are known as : comparison websites/tools, trustmarks, review tools.

¹ Also see the Commissions communication on the proposed Data Protection Package: http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm

² http://www.eurocommerce.be/media/11042/briefing-cons-data_protection.pdf

There is an enormous diversity amongst **comparison tools**, with different outcomes and purposes. Some focus on price and some on quality. Some are managed independently from the seller, some by public authorities, and some by merchants who only want to show the differences between their own products and those of competitors. There is huge and rapid development in this area. Public authorities should be careful before intervening, and not hinder market developments that will benefit consumers and businesses. These tools usually work quite well on national level, but face numerous practical problems across borders: e.g. different VAT-levels, different levels of guarantees, services, delivery, payments (costs), etc. On the other hand, comparison websites should be clear about what and how they compare from the start.

Trustmarks can create consumer trust and enable traders to increase long distance sales. There are successful national trustmarks in some Member States, while in others there are not. There are also some trademarks which are used in several Member States and some brands are by themselves a trustmark for consumers. In all cases, trustmarks should deliver what they promise both to consumer and businesses. The need for trustmarks is very diverse and should be voluntary and not have to go beyond any legal requirement.

New media offers consumers an easy way to post online **reviews** about their experiences whether the buying occurs offline or online. This offers businesses a free way to show other potential consumers that they deliver high quality products and services. But it is important to protect brands or businesses against non-genuine reviews (good or bad) by businesses or their competitors. The same can be said for consumers: one or few discontent consumers can post a lot of bad reviews without revealing their identity. This can and will affect traders in a negative way.

Recommendation 5: Public authorities, certainly at the European level, should refrain from creating or intervening in instruments that are best left to the market. These tools should remain voluntary. The only realm for intervention by European public authorities is to create performance criteria for those tools to work effectively cross-border, to be accurate, and to avoid consumer deception. This could be done through guidelines and the exchange of best practices.

1.5. EU-WIDE PAYMENTS SYSTEM – CHEAPER AND MORE COMPETITIVE PAYMENTS MARKET

A single market in payments is an essential tool for the growth of e-commerce. To promote on-line shopping, both in the domestic and the cross-border market, merchants and consumers require payment methods which are secure, cheap, fast and efficient to use. The EU needs a legislative and policy structure for payments which enables the use of new technologies better fitted to the new e-commerce world.

EU-wide payment systems: The aim of the single euro payment area (SEPA) project is to convert the current national-based payment systems into a true single market. The SEPA end-date regulation will introduce EU-wide schemes for direct debit (SDD) and credit transfer (SCT) from August 2014. The technology now exists to allow both of these payment types to develop as alternatives to card payments in the digital world. Yet new providers, anxious to use these technologies, have so far been unable to enter the market due to the strength of the

four-party card model. The market must change to allow more competition, innovation and the emergence of up-to-date digital models. Two pieces of legislation currently going through the legislative process should make the necessary reforms:

- The PSD II: the revisions to the Payment Services Directive must achieve three main goals in terms of promoting e-commerce: (i) bring new third party payment providers (TPPs) under the regulatory umbrella to ensure they are safe and trustworthy (ii) allow these TPPs access to the banking infrastructures so that they can initiate online payments on behalf of consumers; (iii) establish ground-rules for the security of payments online.
- The multilateral interchange fee (MIF) Regulation: MIFs present a major barrier for on-line retail (as well as face-to-face). They elevate the cost of every transaction, particularly as the predominant online payment method is still the credit card. This option is the most expensive and, without adequate safeguards, it is open to fraud and to credential theft. The MIF Regulation must set low caps on both debit and credit cards and must remove the restrictive rules imposed by card-schemes which minimise the retailer's choice in how he operates card acceptance.

The EU legislature must ensure that these two legislative reforms are adopted urgently and remain true to the Commission proposals so that the payments market is open, competitive and flexible enough to embrace the new business models that the e-commerce market requires.

Harmonisation and standardisation: As new payment models and products come onto the market, the need for interoperability becomes key. E-commerce will not take off unless consumers are able to make payments in a way they recognise through all types of channel, via all online stores across Europe and merchants are able to invest in payment products which all their customers can use. All payment channels must operate with equal ease and security. Therefore a coherent set of standards for SEPA payments must be devised which strikes a balance between the harmonisation and security needed by users and the flexibility required by innovators. All market participants must therefore be involved in the governance of SEPA. The important work of the SecurePay Forum should also be transparent and properly communicated to all players.

Recommendation 6: The EU should ensure the rapid introduction of a single market for payments, which promotes competition and innovation and makes full use of emerging technologies. It should therefore adopt the Payments Services Directive II and the MIF Regulation to provide 1) easier market entry for new providers through access to banking infrastructures, 2) cross-border acquiring, 3) elimination of other anti-competitive rules by card schemes, 4) reduction of interchange fees.

1.6. COMBAT FRAUD AND CYBERCRIME

Consumers and bona-fide businesses both suffer from cybercrime, misleading marketing, identity fraud, payment fraud, etc. Currently, it affects a small part of all transactions. However, as online transactions grow exponentially, so does fraud and cybercrime. This is a major concern for *bona fide* merchants and traders. Protecting against this scourge creates such high costs that they become prohibitive to operate in certain markets. It certainly dents consumer confidence and deters them to shop online. A drawback in the fight against fraud is that cybercriminals operate across borders while the Member States still act mainly on a national basis; cross-border cooperation and exchange of information is poor because of lack of funding and different languages, responsibilities, and legislative systems.

Recommendation 7: The EU must make the combat of cybercrime a priority and enhance cooperation between Commission and Member States, and among Member States. The EU should consider measures such as introduction of postcodes everywhere, centralised access to population data, address verification services, 3D Secure, and better security education of consumers.

1.7. FREEDOM TO TRADE (OR NOT)

It is essential that businesses retain the freedom to choose in which markets he/she chooses to serve end-consumers or not. There are many and valid reasons for not trading B2C cross-border or to a limited number of Member States, and for delivering under different conditions to consumers residing in another Member State than the trader. The reasons for not selling to a consumer have nothing to do with the nationality of a consumer, but with differences in language, level of guarantees, availability and costs of delivery options, VAT rates and regimes etc.

Recommendation 8: The Commission must continue to recognise that the 'Non-discrimination' principle in the Services Directive does not oblige businesses to deliver everywhere in the EU. To push for more cross-border sales, the European Union should reduce legal fragmentation.

1.8. PARCEL DELIVERY AND POSTAL MARKETS (see 2.3)

2. REMOVING BARRIERS TO E-COMMERCE

2.1. E-FAIRNESS AND AN OMNI-CHANNEL TEST FOR COMMERCE LEGISLATION

In order to ensure suitability of the legislation for e-commerce, both nationally and cross-border, we propose fitness that all legislation applicable to commerce is subject to an omni-channel/e-commerce test. This e-commerce test should assess the impact of upcoming or existing legislation affecting commerce in all its channels against the three following criteria:

- Legislation and policy should provide ‘e-fairness’, i.e. a **level-playing field for all forms and business models of commerce**; this means avoiding exclusive rights or obligations, and therefore a competitive (dis)advantage to one or the other retailer depending on the channel(s) it uses (‘channel neutrality’). This applies, i.a. in areas such as taxation, employment and social conditions, transport, environmental responsibility.
- Legislation needs to **fit this new channel** in which retailers and wholesalers operate, in addition to traditional brick-and-mortar retailers
- Legislation needs to encourage and help retailers and wholesalers to go **cross-border, in a way that they can easily benefit from cross-border business opportunities (Digital Single Market Test)**.

Recommendation 9: introduce an omni-channel commerce test into the legislative process (for new and existing legislation). This test would be in line with the Digital Single Market test in the European Parliament’s resolution (2012/2030(INI)). A first step would be to assess, with retail and wholesale operators, where EU legislation and its national transposition has erected barriers, hampered business opportunities, or created an unlevel playing field for any channel/form of commerce.

2.2. LACK OF HARMONISATION OF PRODUCT REQUIREMENTS – LACK OF MUTUAL RECOGNITION

For retailers and wholesalers to engage in online cross-border sales, it is important that EU legislation on products is interpreted and enforced in the same way. For some products (e.g. food, toys, cosmetics), there is specific legislation and the deviation is limited. For others (the so-called “non-harmonised products”), it often happens that Member States set their own, and therefore different or additional, requirements. This creates legal uncertainty and clear barriers, as traders cannot be sure the goods that are legally sold in one Member State can legally be sold in another Member State. Also, the trust between market surveillance authorities between the different Member States is low. As a result, testing and risk assessments that have already been performed, are unnecessarily repeated. Mutual recognition of those would considerably lighten the burden and improve the single market opportunities.

Recommendation 10: The harmonisation of product requirements should be tighten up - The EU must strengthen the application of the principle of mutual recognition of product testing and assessment results between Member States.

2.3. PARCEL DELIVERY AND POSTAL MARKETS

One of the most important cost factors and quality issue for businesses wishing to trade distantly, and particularly cross-border, is parcel delivery. There are different operators in and between Member States and they can have a dominant market position in their respective postal market. This limits choice and bargaining power for the commerce sector, especially for traders with low volumes. Parcel delivery should become less expensive and reliable, through a

more open and competitive market. Related to the delivery barriers are the barriers on handling repair or returns of goods. An important facet of the delivery issues is the mobility challenge. Access to city centres is a growing concern for all channels of commerce. Addressing those in a way that does not discriminate against or in favour of delivery companies or bricks-an-mortars stores will be important.

Recommendation 11: The Commission, the European Parliament and the Member States should encourage vigorous competition and innovation in the postal market and tackle cross-border barriers by pursuing a sensible approach on parcel delivery. At the same time, those in charge of mobility solutions for city centres will need to understand the multiple channels of commerce and capture those in a level playing field policy on urban centre mobility.

2.4. PAYMENTS IN CROSS-BORDER E-COMMERCE (SEE 1.5).

2.5. HARMONISATION OF VAT RULES

Member States have all different VAT rules. A harmonised VAT regime would reduce the administrative burden for businesses and create a level playing field for cross-border sales. Another way to reduce the burden would be to create a 'one-stop-stop' where companies can easily declare VAT in one go. The proposal for a standard VAT return is a big step forward, particularly for SMEs. As an additional step, the Commission could create more transparency in cooperation with the Member States by setting up a digital, up-to-date information point that summarises all the different VAT-rules in the Member States in English.

Recommendation 12: The Commission should create one single point for businesses that summarises all the VAT-regimes in the different Member States.

2.6. SUPPLIERS' TERRITORIAL AND CHANNEL RESTRICTIONS

Constraints are set up by suppliers who have preferred distributors in a given Member State. Other distributors than the preferred one are not allowed (by contract) to deliver the product or brand in the same Member State. Another unjustified restriction is that an brick-and-mortar store is not allowed to sell a product or brand on its online store. These kinds of limitations impede a trader's ability to comply with consumer demand, and prevent retailers to offer consumers their preferred product at the best price.

Recommendation 13: The Commission and Member States should ensure that territorial or channel supply constraints are in line with EU competition law, and that exclusive/selective distribution is allowed only under strictly limited and legally explicit conditions.

3. IMPROVING INFRASTRUCTURE AND SKILLS

3.1. ICT SYSTEMS

For a digital environment to be effective for e-commerce across the EU, ICT systems need to be highly performing, compatible and interdependent. Firstly, to complete the Digital Single Market, those ICT systems sitting with internet providers, telecom providers, banks, postal operators, retailers, public authorities, etc. need to be able to 'talk to each other'. Secondly, broadband penetration is still low, and market access restricted, in many Member States. Some countries have no mobile virtual network operators (MVNOs), and there is reluctance by existing operators to make the "m" available; as a result, m-commerce cannot develop. Thirdly, different electronic standards (power, television) are also barriers to cross-border online retailing.

Recommendation 14: The EU should press for increased broadband penetration, the development of MVNOs, EU-wide electronic standards, and exchange of information on formats and standards of IT-systems, in order to increase compatibility.

3.2. SKILLS

In the offline world, we take the way we buy and sell products and services for granted. A **consumer** walks into a store, can touch and feel what he/she wants, the price is shown on the shelf and for additional questions or services you can ask the merchant. We immediately understand how to pay and what to do if the product or service does not meet expectations. In the online world this is very different. Consumers need a computer or mobile device and access to high-speed internet for shopping online. If a consumer wants to buy online he often needs to make an account, needs an e-mail address, needs an online payment method etc.; he needs the confidence that if something goes wrong he is able to solve the problem. Older consumers in some countries do not use the internet. On the other hand, for people with low mobility, the internet is a blessing provided they have the opportunity to learn how to use it. Digital inclusion is an important societal objective.

To develop online capabilities, businesses need to be able to tap into a wide pool of people with the right of e-skills. They need specialised employees who can build, maintain and further develop their online business and, where relevant, integrate it with the offline world. It is striking that, in many Member States, there is a lack of specific education on all levels for e-learning, e-literacy and e-skills. It is sometimes part of another study, but not a study as such. If we want to fully develop the potential of the Digital Single Market, there is a need for e-skills for consumers/citizens to go online and for business to have qualified employees.

Recommendation 15: Consumers and the commerce sector are in need of e-skills to shop and trade online. The EU should encourage Member States to provide for an adequate level of education that will strengthen consumers competences and correspond with business needs.

3.3. DIGITAL ADMINISTRATION AND E-SKILLS IN GOVERNMENT

The private sector does not operate in a vacuum. It would not make sense to move at accelerated speed towards a digital economy, if public administrations still function with papers and a physical infrastructure only. It is essential that businesses are able to operate their business processes with public administrations (tax returns, VAT returns, product information and permit filings,...) online. There are huge differences in digital literacy and digital administration between Member States. The EU could help close this digital divide.

Recommendation 16: The EU needs to help close the digital divide between Member States with high-level of digital literacy and digital administrative processes and those with low-levels.