Current and upcoming EU regulatory challenges in the e-commerce sector

First Global Meeting of E-commerce Associations - Co-organized with NetComm Suisse & UNCTAD

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About Ecommerce Europe

The VOICE of the e-commerce industry in the EU
Representing 75,000+ companies selling online in Europe
# Barriers to cross-border e-commerce in EU

## Ease of doing cross-border business in Europe

<table>
<thead>
<tr>
<th>Difficulty</th>
<th>Not difficult</th>
<th>Neutral</th>
<th>Difficult</th>
<th>Very difficult</th>
</tr>
</thead>
<tbody>
<tr>
<td>6%</td>
<td>13%</td>
<td>32%</td>
<td>92%</td>
<td>9%</td>
</tr>
</tbody>
</table>

### EU Legal framework
- **Not difficult**: 9%
- **Neutral**: 32%
- **Difficult**: 59%

### Taxation system, VAT and/or customs
- **Not difficult**: 17%
- **Neutral**: 35%
- **Difficult**: 48%

### Logistics and/or distribution
- **Not difficult**: 32%
- **Neutral**: 35%
- **Difficult**: 33%

*437 responses*
EU Law and e-commerce

Regulatory challenges (and opportunities) for e-commerce

1. Geo-blocking Regulation
2. Consumer Law
3. VAT Digital Single Market Package
4. Data Protection and e-Privacy
5. Online platforms
6. Taxation of the digital economy
1. Geo-blocking Regulation

What is geo-blocking according to the EU Commission?

Denying customers’ access to websites from other EU Member States
Preventing customers’ access to products or services from a certain country

What is the objective of the EU Geo-blocking Regulation?

• Give customers better access to goods/services in the EU single market
• How? By preventing discrimination based on customer’s location
• 3 situations covered by the law:
  1. Sale of goods without delivery
  2. Sale of electronically supplied services (i.e. cloud computing)
  3. Sale of services provided in a specific physical location (i.e. car rental)
1. Geo-blocking Regulation

Will it help in selling more cross-border?

Potential issues for e-merchants

- Risk of creating legal uncertainty
- Better solution to increase cross-border e-commerce: **tackle the causes of geo-blocking!**
  - Full harmonization of EU law is a more appropriate approach
  - Easy rules = easy compliance = less costs = more legal certainty for businesses and consumers

Next steps

- Enter into application in all EU on 3 December 2018
1. Geo-blocking Regulation

QUESTION AND ANSWERS RELATED TO THE REGULATION ON ADDRESSING UNJUSTIFIED GEO-BLOCKING AND OTHER FORMS OF DISCRIMINATION BASED ON CUSTOMERS’ NATIONALITY, PLACE OF RESIDENCE OR PLACE OF ESTABLISHMENT WITHIN THE INTERNAL MARKET (“GEO-BLOCKING REGULATION”)

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EU Commission FAQ

Business Organization FAQ
Source: EuroCommerce
2. EU Contract Law

Digital Contracts Proposals

What are the issues?

*For the (online) sales of goods:* too many differences between EU Member States in terms of contract law

*For the supply of digital content:* no EU-wide contract rules + single EU Member States initiatives

28 different sets of rules for B2C contract law → cost of compliance for e-merchants is higher!

What’s the objective of the EU Commission’s Digital Contracts Proposals?

- Provide the same set of rules for businesses and consumers in all EU Member States
- Achieve full harmonization = increased legal certainty for both parties on:
  - Legal guarantee periods, remedies for faulty products, etc.
  - Example: fully harmonized EU-wide legal guarantee period for defective goods set at 2 years
2. EU Contract Law

Digital Contracts Proposals

Potential issues for e-merchants

- “Full harmonization” is at stake!
- Unclear scope → Risks of creating more burdens for merchants
  - Rules should be the same for both online and offline sales
  - Goods with embedded digital content (i.e. smart fridge): is it a physical good or digital content?
- Rules should be easily understandable for both businesses and consumers

Next steps

- Both proposals are still under discussion...
- Adoption date still unclear
2. EU Contract Law

New Deal for Consumers

Why a ‘new’ deal for consumers?
EU Consumer Law is generally fit for e-commerce but needs some targeted adjustments
Concretely: updating 4 existing EU Directives and replacing 1 EU Directive

What is the EU Commission proposing?
• Improved conditions for merchants: no right of withdrawal for over-use of goods, simplified information requirements
• More transparency in online marketplaces
• More transparency on search results on online platforms
• More protection for consumers against unfair commercial practices
• A new tool to obtain collective redress if a large number of consumers are harmed by the same trader
• Higher penalties (fines or other measures) for violations of EU consumer law

Next steps
• Proposals published only last week. Council and EP will start the discussions.
3. VAT Digital Single Market Package

Will this reform help in selling more cross-border?

What are the issues?
Difficult VAT registration and declaration procedures
High VAT-related accounting and administrative costs
General unawareness of VAT rules

What are the objectives of the VAT DSM Reform?
Reduce administrative burden of businesses arising from different VAT regimes:

• Companies that sell goods online (both intra-EU and from third countries) will be able to take care of all their VAT obligations in the EU through a digital online portal, the “One Stop Shop” = single electronic registration and payment mechanism

• The removal of the current exemption from VAT for imports of small packages worth not more than €22 from outside the EU, which leads to unfair competition and distortion for EU companies
3. VAT Digital Single Market Package

Will this reform help in selling more cross-border?

**EU VAT DSM Reform: game changer for e-commerce!**

- Expected to reduce compliance & accountancy costs for e-merchants
- Expected to simplify procedures to sell cross-border in the EU
  
  *but...*

  Online marketplaces will be responsible for ensuring VAT is collected on sales on their platforms that are made by companies in non-EU countries to EU consumers

**Next steps**

- Reform adopted in December 2017
- It will apply as of 2019 and 2021
4. Data Protection & e-Privacy

General Data Protection Regulation (GDPR)

GDPR will be applicable in all EU countries as of 25 May 2018!
• Also applicable to businesses established outside the EU that offer goods/services or monitor the behavior of data subjects (i.e. consumers) within the EU
• Guidelines for implementation from DPAs are not yet finalized

What is Ecommerce Europe currently doing?
• Supporting EU Commission on the application of GDPR via new EC Expert Group:
  ➢ Assist in identifying potential challenges
  ➢ Provide advice to achieve an appropriate level of awareness
  ➢ Online toolkit for businesses (and individuals)
• Contributing to the Guidelines on GDPR developed by the Article 29 Working Party on Data Protection
• Providing general assistance to national e-commerce associations on GDPR
# 4. Data Protection & e-Privacy

## General Data Protection Regulation (GDPR)

**Rules for business and organisations**

Find out what your organisation must do to comply with EU data protection rules and learn how you can help citizens exercising their rights under the regulation.

<table>
<thead>
<tr>
<th>Application of the regulation</th>
<th>Principles of the GDPR</th>
<th>Public administrations and data protection</th>
<th>Dealing with citizens</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who does the data protection law apply to?</td>
<td>What data can we process and under which conditions?</td>
<td>What are the main aspects of the General Data Protection Regulation (GDPR)? If a public administration should be aware of?</td>
<td>How should requests from individuals be dealt with?</td>
</tr>
<tr>
<td>Do the rules apply to SMEs?</td>
<td>Purpose of data processing</td>
<td>How should requests from individuals be dealt with?</td>
<td>What if a public administration fails to comply with the data protection rules?</td>
</tr>
<tr>
<td>Do the data protection rules apply to data about a company?</td>
<td>How much data can be collected?</td>
<td>How should requests from individuals be dealt with?</td>
<td>What if a public administration fails to comply with the data protection rules?</td>
</tr>
<tr>
<td></td>
<td>For how long can data be kept and is it necessary to update it?</td>
<td>How should requests from individuals be dealt with?</td>
<td>What if a public administration fails to comply with the data protection rules?</td>
</tr>
<tr>
<td></td>
<td>What information must be given to individuals whose data is collected?</td>
<td>How should requests from individuals be dealt with?</td>
<td>What if a public administration fails to comply with the data protection rules?</td>
</tr>
</tbody>
</table>

**Legal grounds for processing data**

<table>
<thead>
<tr>
<th>What is the legal ground for processing data?</th>
<th>Should the data protection law apply?</th>
<th>What data protection law applies?</th>
<th>What data protection law applies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grounds for processing personal data</td>
<td>Are there any specific safeguards for data about children?</td>
<td>Can data received from a third party be used for marketing?</td>
<td>What data protection law applies?</td>
</tr>
<tr>
<td>Sensitive data</td>
<td>Can data be processed in an anonymous manner?</td>
<td>Should the data protection law apply?</td>
<td>What data protection law applies?</td>
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**Obligations**

<table>
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<th>Controller</th>
<th>Information processor</th>
<th>Information processor</th>
<th>Information processor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are the obligations the same regardless of the amount of data?</td>
<td>Are there any specific safeguards for data about individuals?</td>
<td>Can data received from a third party be used for marketing?</td>
<td>What data protection law applies?</td>
</tr>
<tr>
<td>Security and data protection by design and by default</td>
<td>What is a data breach and what do we have to do in case of a data breach?</td>
<td>Should the data protection law apply?</td>
<td>What data protection law applies?</td>
</tr>
<tr>
<td>Data Protection Officer</td>
<td>Who is responsible for the data protection?</td>
<td>Should the data protection law apply?</td>
<td>What data protection law applies?</td>
</tr>
<tr>
<td>What rules apply if my organisation transfers data outside the EU?</td>
<td>Can I demonstrate that my organisation is compliant with the GDPR?</td>
<td>Should the data protection law apply?</td>
<td>What data protection law applies?</td>
</tr>
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</table>

**39 DAYS**

Time left until GDPR applies. Act now!
4. Data Protection & e-Privacy

Proposal for a Regulation on e-Privacy

What are the issues?

Current ePrivacy Directive not future-proof
Suboptimal level of harmonization
Fear of breaking privacy rules when selling cross-border
Suboptimal rules on cookies

What’s the objective of the EU Commission’s Proposal?

• Replace the ePrivacy Directive with a Regulation
• Full harmonization approach to increase legal certainty
• Adapt privacy rules to new IT-based services (i.e. WhatsApp, etc.)
• Align the ePrivacy framework to the adopted GDPR
4. Data Protection & e-Privacy

Proposal for a Regulation on e-Privacy

**Potential issues for e-merchants**

- Choice of a Regulation is positive $\rightarrow$ avoid “gold-plating” from Member States
- Cookies rules need revision: approach of Commission not optimal
- Conflicts and overlaps with the adopted GDPR:
  - GDPR $\rightarrow$ rules on the processing of personal data
  - ePrivacy $\rightarrow$ rules on the right of confidentiality of electronic communications
5. Online platforms

Promoting fairness and transparency for business users

EU Commission expected to present a Proposal for a Regulation on 25 April 2018

- Scope: Business-to-Business
- Principle based
- Expected to be adopted by May 2019 (tbc)
6. Taxation of the digital economy

How to fairly tax the digital economy: EU or global solutions?

EU or global solutions?

Short-term or long-term solutions?
Thank you!

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