



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

First Global Meeting of E-commerce Associations - Co-organized with NetComm Suisse & UNCTAD  
*Luca Cassetti, Director of EU Public Affairs, Ecommerce Europe*

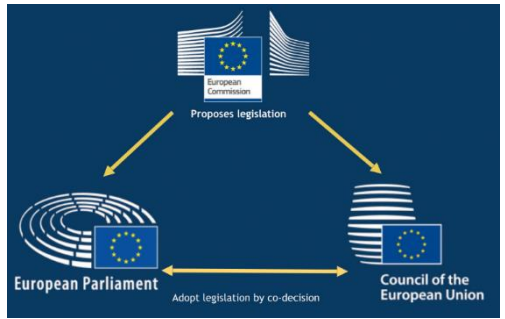




# About Ecommerce Europe

## The VOICE of the e-commerce industry in the EU

Representing **75.000+** companies selling online in Europe



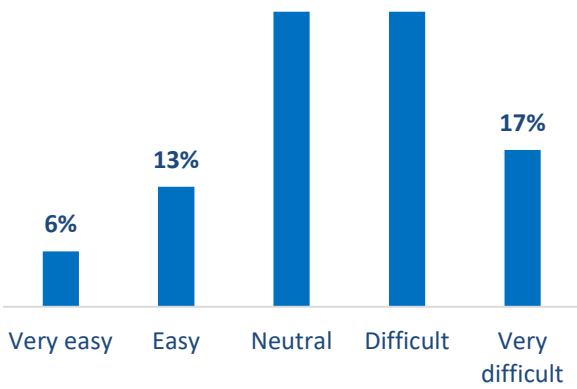


# Barriers to cross-border e-commerce in EU

## Ease of doing cross-border business

### in Europe

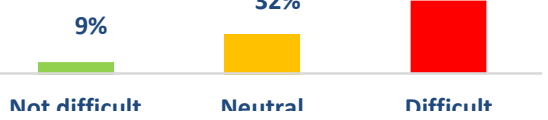
\*437 responses



1

## EU Legal framework

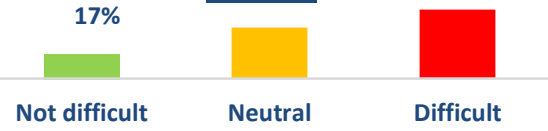
\*437 responses



2

## Taxation system, VAT and/or

customs...



3

## Logistics and/or distribution

\*437 responses





# #DigitalSingleMarket

EU Digital Agenda



# 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

**QUESTIONS AND ANSWERS RELATING 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")**

Contents

QUESTIONS AND ANSWERS RELATING 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").....1

1. General information.....7

1.1. What is geo-blocking and what does the Geo-blocking Regulation change?.....7

1.2. What are the main elements of the Regulation?.....7

1.3. How does the Regulation ensure the contractual freedom of companies?.....9

1.4. How does the Regulation avoid imposing additional regulatory burden on SMEs?.....10

1.5. Why can't these problems be addressed by better enforcement of existing rules?10

2. Scope of the Regulation (Article 1).....10



## EU Commission FAQ

<https://ec.europa.eu/digital-single-market/news-redirect/617204>

**Key rules**

Customers	Traders
Must be able to access and browse any web-shop they visit If customers are automatically redirected they need to supply consent.	Must not refuse to sell to customers based on their nationality, place of residence, or establishment Traders must offer the same sale conditions as to local customers.
Must be able to buy any good to receive on any EU website irrespective of their nationality, place of residence, or establishment. all countries' (except postal), etc. rules Some businesses with sales only when they buy goods/services for their own use only.	Are not bound to deliver outside their delivery area. Traders should clearly inform about the delivery restrictions.
Have the same rights as local customers. Customers from a different EU country than the trader have the right to buy in the same place and conditions that is offered to local customers.	Are free to charge different prices on websites in different countries and to different users (devices). Customers pay the VAT of the country where the seller delivers their goods. Traders that not automatically change price based on the customer's location or address.
Must be able to pay for any payment means offered on the particular website they visit. where the trader has a mention of "local, national payment" may be required.	Are free to offer payment means according to their choice. Traders must not reject those means of payments based on the location of the customer or a bank.
	Have no obligation to ensure that the goods to be sold meet EU (the customer's) country (regulation, label, safety). Traders have no obligation to inform customers about different product label requirements.
	Are not bound by the prohibition of price discrimination. Traders may not refuse a sale, even if their agreement with the supplier imposes such a prohibition.

This is a high-level overview of the key rules. It is deliberately simple and does not capture all the details and caveats. Please consult the Regulation and the questions and answers below for further details.

## 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)



**Data protection**

**Better rules for small business**

Stronger rules on data protection from 25 May 2018 mean citizens have more control over their data and business benefits from a level playing field. One set of rules for all companies operating in the EU, wherever they are based. Find out what this means for your SME.

**39 DAYS**

Time left until GDPR applies.

**Act now!**

What is personal data? Why change the rules? What your company must do The cost of non-compliance



European Commission > Law > Law by topic > Data protection > Rules >

### 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.

Application of the regulation	Principles of the GDPR	Public administrations and data protection
<p>Who does the data protection law apply to?</p> <p>Do the rules apply to SMEs?</p> <p>Do the data protection rules apply to data about a company?</p>	<p>What data can we process and under which conditions?</p> <p>Purpose of data processing</p> <p>How much data can be collected?</p> <p>For how long can data be kept and is it necessary to update it?</p> <p>What information must be given to individuals whose data is collected?</p>	<p>What are the main aspects of the General Data Protection Regulation (GDPR) that a public administration should be aware of?</p> <p>How should requests from individuals be dealt with?</p> <p>What if a public administration fails to comply with the data protection rules?</p>
Legal grounds for processing data	Obligations	Dealing with citizens
<p>Grounds for processing</p> <p>Sensitive data</p> <p>Are there any specific safeguards for data about children?</p> <p>Can data received from a third party be used for marketing?</p>	<p>Controller/processor</p> <p>Are the obligations the same regardless of the amount of data my company/organisation handles?</p> <p>What does data protection 'by design' and 'by default' mean?</p> <p>What is a data breach and what do we have to do in case of a data breach?</p> <p>When is a Data Protection Impact Assessment (DPIA) required?</p> <p>Data Protection Officers</p> <p>What rules apply if my organisation transfers data outside the EU?</p> <p>How can I demonstrate that my organisation is compliant with the GDPR?</p>	<p>How should requests from individuals exercising their data protection rights be dealt with?</p> <p>What personal data and information can an individual access on request?</p> <p>Do we always have to delete personal data if a person asks?</p> <p>What happens if someone objects to my company processing their personal data?</p> <p>Can individuals ask to have their data transferred to another organisation?</p> <p>Are there restrictions on the use of automated decision-making?</p>



# 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 → avoid “gold-plating” from Member States
- Cookies rules need revision: approach of Commission not optimal
- Conflicts and overlaps with the adopted GDPR:
  - GDPR → rules on the processing of personal data
  - ePrivacy → rules on the right of confidentiality of electronic communications



# 5. Online platforms

## Promoting fairness and transparency for business users

Proposal for a



**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on promoting fairness and transparency for business users of online intermediation  
services and online search engines in the Digital Single Market**

(Text with EEA relevance)

- 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

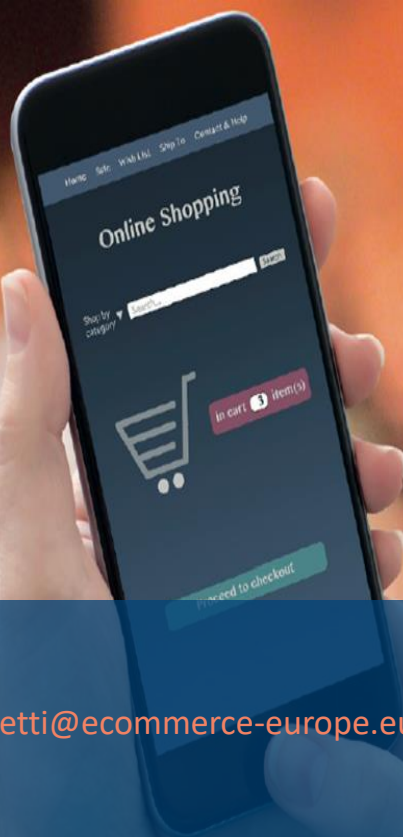
How to fairly tax the digital economy: EU or global solutions?

EU or global solutions?



Short-term or long-term solutions?





# Thank you!

E-mail: [lucacassetti@ecommerce-europe.eu](mailto:lucacassetti@ecommerce-europe.eu) or Twitter: [@Ecommerce\\_EU](https://twitter.com/Ecommerce_EU)

