

Main priorities for the European Digital Commerce sector

2022

PRIORITY PAPER



A word from the Secretary General

The retail sector is undergoing major changes, most of which have been accelerated by the COVID-19 outbreak. In this period of pandemic, e-commerce has been crucial for the continuation of economic and societal activities in Europe. The sector has proven resilient and helped many businesses accelerate, or even start, their digital transformation, leading to the development of seamless commerce (or omnichannel) solutions. It is expected that these developments, as well as the green transition, will continue to shape the future of retail also after the pandemic. At the same time, they have shown the importance of designing future-proof and channel-neutral policies, capable to adapt to companies' realities and consumers' expectations, in a retail ecosystem where new, innovative business models continue to make their appearance.

With this paper, Ecommerce Europe wants to bring to the attention of EU policymakers the key principles for a regulatory framework fit for the future of retail, and share its views on sustainability, the platform economy, the use of data and many more relevant topics.

With the ultimate goal of creating a European framework fit for current and future challenges that will boost digital commerce in Europe, Ecommerce Europe's vision about the future of retail is driven by a set of horizontally applicable key principles (please see next page) that policymakers should take into account.

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Level playing field

E-commerce players active in the Union but based in non-EU countries should play by the same rules as EU-based businesses in order to avoid creating any unfair competition. Ecommerce Europe advocates for a level playing field to ensure that EU-based businesses do not suffer from a competitive disadvantage vis-à-vis non-EU based players.



Channel neutrality

Online and offline channels should be treated equally from a regulatory perspective to ensure the further development of omnichannel solutions by companies, so that consumers can ultimately benefit from a seamless shopping experience. Ecommerce Europe advocates for channel neutrality in legislation as paramount for digital retailers to succeed.



Proportionality

To allow innovation and the growth of a strong European business climate, the regulatory framework must be clear and not impose disproportionate obligations on businesses. In addition, Ecommerce Europe advocates for principle-based rules.

Key principles for a regulatory framework fit for the future

Harmonisation

Due to the increasing cross-border nature of e-commerce, the fragmentation of the regulatory framework within the Single Market adds further obligations and burdens to businesses. Companies have been facing obstacles expanding abroad and implementing new cross-border solutions across the Union due to legal fragmentation. Ecommerce Europe advocates for more harmonised EU rules, which are fundamental to alleviate unnecessary regulatory burdens and create legal certainty for businesses.

Enforcement

Enforcement of EU rules, both in the Union itself and especially against companies based in third countries, has proven to be challenging, as national competent authorities are often under-resourced, under-staffed and lack in (international) coordination. Ecommerce Europe calls on the European Commission and EU Member States to boost and ensure effective and efficient enforcement of the EU legislation.

SME-friendly

Small and medium-sized enterprises (SMEs) are the backbone of the European economy. Many of them have embraced e-commerce and shifted to omnichannel solutions in the past years and this trend is expected to continue in the future. Therefore, decision-makers should focus on providing SMEs financial support and reducing administrative burdens at EU and national level, in order to give them a fair chance to compete in a fast-paced global market.



POLICY PRIORITIES

1

Rules fit
for the
evolving retail
landscape

2

Balanced and
data-driven
economy

3

A fair and
sustainable
future for retail

4

A competitive and
innovative European
retail payment market

5

A future-
proof taxation
framework

6

Logistics fit
for the future
of commerce

Rules fit for the evolving retail landscape

- Online platforms have become one of the key drivers of innovation in the EU's digital economy. They help increase consumer choice, provide SMEs with access to new markets and contribute to the competitiveness of European businesses. European policymakers are currently aiming to propose or update legislation to better reflect these relatively new business models. In the Digital Services Act and Digital Markets Act debates, it is crucial that **any new obligations placed on online platforms are proportionate to their business model, their capabilities, and the role they play in the value chain**. Additionally, it is important to find a balance between creating and maintaining a level playing field, fostering trust and transparency, and allowing for sufficient space for growth and innovation.
- Through the increased uptake of digital commerce, the retail sector has been able to absorb most of the economic shock caused by lockdown measures across Europe. Unfortunately, the perception has been created that there are 'winners' and 'losers' of the COVID-19 crisis. **Instead of referring to the impact of the crisis in such terms, e-commerce should rather be seen as an 'enabler'**. In its draft revision of the Vertical Block Exemption Regulation (VBER), the Commission seems to unjustly attempt to create certain advantages for offline retail in comparison to e-commerce, for instance by allowing 'dual pricing'. It is important for policymakers to start seeing the retail sector as one industry, in which **retailers have moved beyond a distinction between online and offline commerce**. It is high time policymakers respond to these developments and adopt a **channel-neutral approach in their work**, specifically in the VBER review and in the overall "Review of competition policy: fit for new challenges".
- To address new challenges and opportunities brought by increased globalisation and digitalisation, 2022 will be a crucial year for the **revision of product safety and liability rules**. While it is important that these legislative instruments will be updated and further aligned with other existing legislation on for instance market surveillance, policymakers should be careful not to change the elements that are still functioning properly. It is also important to establish a clear scope, legal certainty on definitions and a balanced allocation of responsibilities and liabilities of the various actors in the supply chain.
- In response to the rapid evolution of retail, the EU has amended several consumer laws, such as the rules on price reductions, on unfair commercial practices and consumer rights, has adopted new rules on the sales of goods and digital content, and put forward new proposals (e.g., Consumer Credits Directive). These new legislations and their applications in Member States **must be future-proof, and above-all ensure a high level of harmonisation for business to operate and for consumers to be protected**.

Balanced and data-driven economy

- With the retail industry experiencing an accelerated digitalisation, the role of data is increasingly important. European policymakers are addressing concerns about privacy and data protection across many legislative files. It becomes very important, therefore, to **carefully assess whether these concerns arise due to a legal gap or are caused by enforcement issues.**
- **Work on the application of General Data Protection Regulation (GDPR) is ongoing**, through the Commission's Multistakeholder expert group and via guidelines prepared by the European Data Protection Board (EDPB). In particular, the EDPB should strive to improve transparency and to limit its guidelines to what is factually regulated by the GDPR. As the discussions on the e-Privacy Regulation go back as far as 2017 and are still ongoing, **digital retailers and consumers are left with an outdated EU privacy framework.** The key demands of the digital commerce sector remain important to stress to policymakers, in particular with regards to further processing, unsolicited communications, the application deadline, supervisory authorities, and alignment with the GDPR.
- Artificial Intelligence (AI) is increasingly being integrated in the retail landscape. From customising offers in real time, innovating the way consumers can digitally try on fashion items, to optimising inventory management, AI can help e-commerce companies better meet changing consumer demands. The European Commission's proposal for an **Artificial Intelligence Act** aims to provide legal certainty and ensure that AI solutions used in the EU are safe and comply with EU law. In the coming year, it will be crucial in the discussions on the AI Act to **ensure that the scope and definitions are clear and that the rules are proportionate.** European policymakers have also set out to strengthen the European data economy through proposals such as the Data Governance Act and the upcoming Data Act. In regulating the data economy and data-driven technologies, the EU should aim for a level playing field, but **the obligations must also be feasible to adhere to and compliance with the rules should not be too burdensome, hamper innovation or the uptake of new technologies by in particular SMEs.**

A fair and sustainable future for retail

- The European legislative framework has a key role in creating the right market conditions and signals for the rapid uptake of more sustainable packaging, products and services in the European Union. The **role of digitalisation as leverage to develop more sustainable practices** and the evolution towards cross-border, omnichannel commerce should be a key element of our transition to a circular economy. Digitalisation should be seen as an opportunity to **empower consumers** (in terms of access to information and to sustainable products and services), **improve information sharing across the value chain, making packaging and logistics more sustainable and efficient and so on.**
- In turn, this means that the **regulatory framework must evolve** to accompany this transition. Upcoming initiatives such as the Sustainable Product Initiative can play a role in ensuring better product design and propose new tools to incentive sustainable products. Ecommerce Europe also encourages adapting existing definitions and frameworks in EU law (e.g., on the concepts of “waste” or “second hand”), or practices (e.g., adapting **Extended Producer Responsibility** or **VAT** systems to new realities). Legislation such as the revision of the Packaging and Packaging Waste Directive should focus on the overall objective and ambition of reducing packaging waste and grant the industry sufficient **flexibility to develop new sustainable approaches to packaging and logistics.**
- It is crucial to focus on the role and responsibility of businesses within the wider context of their value-chain. This will require a sound legal framework and work on harmonisation and standardisation. **Sustainable information and the substantiating of environmental claims require a flow of information that can be facilitated through a Digital Product Passport**, if this process is accompanied by standardisation efforts for environmental impact methodology, and designed with minimal administrative burden in mind. It will also be essential to ensure the implementation of proportional due diligence rules. Finally, it is crucial to ensure **legal protection across the value-chain**, especially for small sellers, and that liability and responsibility in relation to consumer protection and redress be assigned to the operator in control of the issue, notably on questions related to the environmental features of a product.
- Companies are investing and innovating to reduce their emissions in all aspects of their operations, for example by deploying sustainable last-mile delivery or optimising warehouses and retail spaces. European Green Deal initiatives represent a key opportunity to continue boosting investment in **energy-efficient and sustainable infrastructures** and should therefore be designed to bolster industry efforts.

A competitive and innovative European retail payment market

- It is imperative for the European legislative framework to allow for consumer-centric solutions and for the ability to meet consumer expectations in an evolving retail sector. This will require continuous monitoring and improvement of the implementation of **Strong Customer Authentication**, encouraging the development of **consumer-centric and omnichannel instant payment solutions**, the roll out of an **ambitious European Digital Identity** framework but also through a **proportional** framework to regulate the growth of **consumer credits**.
- **Data-driven innovation** must be leveraged to improve retail payments in the EU. Policymakers should use the **revision of the Payment Services Directive 2 and the future initiative on Open Finance** to assess the missing building blocks for the development of Open Banking in the EU. Ensuring a balanced framework for **Artificial Intelligence and data sharing** will also be key to unlocking companies' innovation potential. These developments are critical, beyond SCA, to ensure efficient and lasting fraud reduction in the EU. Finally, ensuring **fair access to future payment technologies**, for example a Digital Euro, will require efforts to educate and involve a very wide number and variety of merchants across Europe.
- Building on the ambition of the PSD2, more efforts are needed to ensure that the EU payment market is **more competitive and transparent**. Further work is needed to promote competition by enabling the growth of new players, leveraging for example **open banking and instant payment**, but also by scrutinising the evolution of the market and the cost of payment (looking at the evolution of and the new costs of card-based payments). The **cost element of payments should be a key component of discussions on the future of the market**, as well as the impact on merchants and consumers, regardless of the payment technology being used.

A future-proof taxation framework

- Following the OECD agreement on the reform of the international tax system, the coming year will be crucial for how this will be organised at EU level. The European Commission is proposing legislative instruments to implement the OECD deal. **To avoid double taxation, it has become more important than ever for EU Member States to remove their national digital taxes and for the EU to not move forward with a separate EU digital levy.** The new taxation framework must be global and ensure a level playing field so that companies are taxed in a fair, non-discriminatory and channel-neutral way.
- The implementation of the VAT E-commerce Package needs to be monitored closely and remaining issues must be consistently addressed to ensure that the new framework reaches its full potential and truly facilitates cross-border commerce.
- The Single VAT ID is a crucial building block for the future of indirect taxation in the EU. Ecommerce Europe has been advocating for prioritising the publication of this proposal. By **extending the One Stop Shop to all pan-EU distance sales from storage located in different EU countries to the final consumer, the success of the VAT E-commerce Package to simplify VAT compliance and filing will concretise.**

Logistics fit for the future of commerce

- The internal market for postal services is an integral part of the Digital Single Market, providing an important channel for e-commerce delivery. Digital commerce has played an especially positive force for postal service providers, and Ecommerce Europe believes that the **postal channel will continue to be a valuable asset** for online merchants and their customers. At the same time, the current **postal regulatory framework may not be fully fit to address the issues that have arisen in recent years**. For this reason, the European Commission has launched an evaluation exercise of the Postal Services Directive, suggesting to adapt it to the new market situation and the increased e-commerce flow. Ecommerce Europe will be closely involved in this process to advocate for **balanced and evidence-based rules in the interest of the wider e-commerce sector**.
- In its report on the application and implementation of the Cross-Border Parcel Regulation, the European Commission found that the Regulation has achieved its aims, but eventually more parallel initiatives could be taken to improve tariff transparency and regulatory oversight. Ecommerce Europe overall supports the **principle of transparency in the parcel delivery market**. However, any new initiative should be carefully assessed and evidence-based, to ensure that the interests of the e-commerce sector are taken into account. Furthermore, overall coherence with other ongoing initiatives, such as the implementation of the European Digital Agenda and the European Green Deal, should be prioritised.
- Building on the transition to a more digitalised system and data model, Ecommerce Europe believes it is crucial to support the **process of digitalisation of the Customs Union kickstarted by the EU** in order to ensure a seamless flow of goods into the Union, for instance by **simplifying border formalities**. Also, the new EU Customs Data Model will reflect the Universal Postal Union's Customs Data Model and the Electronic Advance Data system, which reflect the parallel work carried out in the European Standardisation Committee's (CEN) Technical Committee 331. Ecommerce Europe will be closely involved in this process, also thanks to its presence both at the EU and UPU level.



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