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<b>MI</b>	<b>339</b>
<b>TELECOM</b>	<b>91</b>
<b>COMPET</b>	<b>247</b>
<b>ETS</b>	<b>12</b>
<b>CONSOM</b>	<b>77</b>

**COVER NOTE**

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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 23 April 2014

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: Commission Staff Working Document  
E-commerce Action plan 2012-2015  
State of play 2013

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Delegations will find attached Commission document SWD(2013) 153 final.

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Brussels, 23.4.2013  
SWD(2013) 153 final

**COMMISSION STAFF WORKING DOCUMENT**

**E-commerce Action plan 2012-2015  
State of play 2013**

## 1. INTRODUCTION

In January 2012, the Commission adopted, in the context of the Single Market Act I<sup>1</sup> and the Digital Agenda for Europe<sup>2</sup>, a Communication on e-commerce and online services<sup>3</sup>. This Communication sets out 16 targeted initiatives aimed at identifying the main obstacles to the Digital Single Market and at doubling the share of e-commerce in retail sales (3.4 % in 2010) and that of the Internet sector in European GDP (less than 3 % in 2010) by 2015. The Communication was based on a broad public consultation on issues central to on-line services and e-commerce, which was held in the second half of 2010.

In order to best tackle obstacles to the development of digital services, the Communication and the accompanying Staff Working Document set out 5 broad priorities:

- Develop legal rules to facilitate cross-border offers of online products and services
- Improve operator information and consumer protection
- Ensure reliable and efficient payment and delivery systems
- Combat abuse and resolve disputes more effectively
- Deploy high-speed networks and advanced technological solutions

This staff working document fulfills the commitment made in the Communication to report annually on the state of play of implementation of the action plan. It focuses on the 16 main actions undertaken by the Commission. Progress on the other actions that were quoted in the text of the Communication but not formally numbered as actions is also reported about.

In the Single Market Act II, adopted by the Commission on 3 October 2012<sup>4</sup>, the digital economy and the realization of the Digital Single Market for Europe are one of the four main drivers of a more prosperous and competitive Europe. It emphasizes that additional efforts are needed to achieve the objectives of the E-Commerce Communication, address market fragmentation, meet the infrastructure investment challenge and realize paperless administration. The Commission has called on the

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<sup>1</sup> Commission Communication “Single Market Act - Twelve levers to boost growth and strengthen confidence; Working together to create new growth”, COM(2011) 206 final  
[http://ec.europa.eu/internal\\_market/smact/index\\_en.htm](http://ec.europa.eu/internal_market/smact/index_en.htm)

<sup>2</sup> Commission Communication ‘A Digital Agenda for Europe’ COM(2010) 245 <http://ec.europa.eu/digital-agenda/en/digital-agenda-europe-key-publications>

<sup>3</sup> Commission Communication “A coherent framework for building trust in the Digital Single Market for e-commerce and online services” COM (2011)942 Final, Here after “the Communication”; here after “e-commerce Communication” [http://ec.europa.eu/internal\\_market/e-commerce/communications/2012/index\\_en.htm](http://ec.europa.eu/internal_market/e-commerce/communications/2012/index_en.htm)

<sup>4</sup> Commission Communication “Single Market Act II – Together for new growth”, COM(2012) 573 final

European Parliament and the Council to fast-track all key legislative actions and adopt them as a priority by Spring 2014.

All the actions proposed to be taken up by the Commission in this document are consistent and compatible with the current Multiannual Financial Framework (2007-2013) and the proposal for the new MFF 2014-2020.

## **2. RECEPTION BY STAKEHOLDERS AND EUROPEAN INSTITUTIONS**

The Communication was well received by **stakeholders**. They supported the Commission's intention to work towards the completion of the Digital Single Market, and agreed with the five priorities identified above, which they considered appropriate and exhaustive.

The **Council Conclusions** of 30 May 2012<sup>5</sup> recalled the need to promote long-term growth and competitiveness, to create jobs and contribute to Europe's economic recovery and for that purpose, *"underline the urgent need for ambitious steps to be taken to achieve a genuine and fully-fledged Digital Single Market; and welcome the Commission's Communication "A coherent framework for building trust in the digital single market for e-commerce and online services" of 11 January 2012 and the action plan contained therein"*.

The **European Parliament** adopted, on 11 December 2012, a resolution on completing the Digital Single Market<sup>6</sup>, which strongly supports the broad thrust proposed by the Commission. It welcomes both the E-Commerce Communication and the Single Market Act II and reviews all related European policies. The resolution attaches great importance to policies in favor of small and medium enterprises (SMEs) and calls for increased efforts to improve their access to finance, in the framework of European financing programs to ensure that they can trade online. The European Parliament calls for solutions to overcome the remaining barriers in the Digital Single Market (in the areas of delivery, VAT, payments, consumer rights, data protection, copyright), in line with proposals from the Commission. It also calls for measures to build confidence and trust in the Digital Single Market via actions in the field of competition (net neutrality, unfair practices), consumer protection (alternative and online dispute resolution) and infrastructures. Finally, the resolution calls for the necessary digital infrastructure to be in place for a more competitive and inclusive Europe (for example high-speed broadband infrastructures, e-government, including e-procurement, e-signatures).

## **3. STATE OF PLAY OF THE ACTION PLAN ONE YEAR AFTER ADOPTION**

### **3.1 Develop legal rules on cross-border offers of online products and services**

**Main action 1: The Commission will ensure that the Electronic Commerce Directive and the Directives protecting online consumers are correctly applied**

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<sup>5</sup> Conclusions on the Digital Single Market and Governance of the Single Market - 3169<sup>th</sup> COMPETITIVENESS (Internal Market, Industry, Research and Space) Council meeting ,Brussels, 30 and 31 May 2012

<sup>6</sup> (2012/2030(INI))

**by inter alia, improved administrative cooperation with the Member States, in particular through the extension of the Internal Market Information System (IMI), the Consumer Protection Cooperation network (CPC) and an in-depth evaluation study of the transposition and implementation of the Directive (2012)<sup>7</sup>.**

### **Internal Market Information system:**

The Regulation on the Internal Market Information (IMI) system, adopted on 25 October 2012 and entered into force on 4 December 2012<sup>8</sup>, paves the way for the flexible expansion of IMI to further policy areas.

According to Art. 29(3) of the Regulation, the Commission may launch a pilot project in the area of electronic commerce to assess whether IMI is an efficient, cost-effective and user-friendly tool to implement Article 3(4), (5) and (6) of the Electronic Commerce Directive (ECD). The proposed pilot project will be launched to support in particular its administrative cooperation provisions. This initiative was endorsed in the context of the adoption procedure of the IMI Regulation, where both Member States and the European Parliament agreed on the launching the pilot.

In the second half of 2012, discussions started within the Expert Group on E-Commerce<sup>9</sup> about the modalities of the pilot project. The pilot project is scheduled to start in the second half of 2013.

### **Review of the CPC regulation:**

The Commission services started a comprehensive review process of the CPC Regulation in 2012. The review examines, among other issues, whether the Regulation and its mechanisms are fit-for-purpose and continue to respond effectively to current and future challenges and a rapidly developing e-commerce sector. Following an external evaluation study in 2012<sup>10</sup>, a high-level strategic debate with stakeholders, a public consultation and the launch of an impact assessment are planned for 2013.

### **Implementation of the E-Commerce Directive:**

In 2012 the Commission services commissioned an in-depth study concerning the compliance of national legislation and (last-instance) national case-law with the E-commerce Directive. The conformity assessment concerns all 27 Member States and covers each specific provision of the Directive. The national case-law will however

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<sup>7</sup> In the whole of this document, the text in bold used as a heading for each main action is a direct quotation from the e-commerce communication. The deadlines mentioned here are the one foreseen in the e-commerce Communication.

<sup>8</sup> Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:316:0001:0011:EN:PDF>

<sup>9</sup> Created in 2005, it is composed by representatives of MS administrations in charge of the e-commerce directive and aims at facilitating administrative co-operation between Member States and Member States and the Commission services, discussing problems in the application of the directive and emerging issues in the area of e-commerce.

<sup>10</sup> [http://ec.europa.eu/consumers/enforcement/docs/cpc\\_regulation\\_inception\\_report\\_revised290212\\_en.pdf](http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf)

be limited to section 4 of the E-commerce Directive. The report will be finalised in the first half of 2013.

### **Other actions:**

#### Guidelines on Article 20 of the services directive

According to Article 20(2) of the Services Directive<sup>11</sup>, consumers should generally not be faced with differences of treatment due to their nationality or residence. However, if the service provider can provide objective reasons for different treatment, it will not be considered discriminatory. Businesses may have valid reasons for refusing to trade or for applying different conditions and therefore the non-discrimination clause always requires a case-by-case analysis. This article of the Services Directive is particularly - but not exclusively - relevant in the context of cross border e-commerce.

On 8 June 2012, the Commission adopted a “Communication on the implementation of the Services Directive: A partnership for new growth in services 2012-2015”<sup>12</sup> accompanied by a Staff Working Document<sup>13</sup> with a view to establishing guidance on the application of Article 20(2) of the Services Directive which enshrines the principle of non-discrimination of service recipients on the basis of nationality or country of residence. The document explores typical situations in which service recipients are confronted with different treatment or refusal to provide services including those related to online transactions. It also explains when differences in treatment or refusal to provide a service may or may not be justified, so that competent authorities in charge of the enforcement of the provision on the principle of non-discrimination are better equipped to undertake an assessment.

As the Staff Working Document provides only initial clarifications on the non-discrimination clause on the basis of information gathered thus far, the Commission considered it necessary to work further on the application of this provision with national bodies responsible for enforcing the clause and dealing with consumers' complaints and with business representatives to improve transparency and support efforts to ensure that customers can shop cross-border in the single market.

Additional specific and practical guidance may be issued by the end of 2013 on the basis of further experience with the national implementation of this provision. Commission services planning to focus on the sectors which generate the highest number of consumers' complaints, namely tourism, on-line retail and digital downloads.

**Main action 2: ensure that the European strategy for intellectual property rights is implemented rapidly and ambitiously, in particular by means of a legislative initiative on private copying (2013) and the review of the Directive on**

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<sup>11</sup> Directive 2006/123/EC of 12 December 2006 on services in the internal market <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:EN:PDF>

<sup>12</sup> COM(2012) 261 final [http://ec.europa.eu/internal\\_market/services/services-dir/implementation\\_report\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/implementation_report_en.htm)

<sup>13</sup> Commission Staff Working Document with a view to establishing guidance on the application of Article 20(2) of Directive 2006/123/EC on services in the internal market [http://ec.europa.eu/internal\\_market/services/docs/services-dir/implementation/report/SWD\\_2012\\_146\\_en.pdf](http://ec.europa.eu/internal_market/services/docs/services-dir/implementation/report/SWD_2012_146_en.pdf)

**copyright in the information society (2012). The Commission will also report on the outcome of the consultation on the online distribution of audiovisual works and on the implications of the "Premier League" ruling in the field of digital content.**

### **Implementation of the Intellectual Property Rights Strategy<sup>14</sup>:**

Following the adoption of the strategy in May 2011, Commission services have been working intensely towards the implementation of the Communication on a Single Market for Intellectual Property Rights across all its various areas. The recently-adopted (October 2012) Directive on Orphan works<sup>15</sup> sets out common rules on the digitisation and online display of orphan works and introduces a new exception to copyright (one of the few ones to be fully harmonised at EU level). The Memorandum of Understanding (MoU) on Out-of-Commerce Books sets out a broad framework for the mass digitisation of books and scientific journals. The practical implementation of the MoU is ongoing. Finally, the proposed directive on collective rights management (July 2012) aims to facilitate multi-territorial licensing for music by allowing collecting societies to aggregate repertoires. The proposal is currently being negotiated by the European Parliament and the Council.

In its Communication of 18 December 2012 on Content in the Digital Single Market<sup>16</sup>, the Commission has set out its strategy for the next two years in order to ensure an effective digital single market in the area of copyright.

This Communication sets out two parallel work tracks. On the one hand, the Commission will complete its on-going review of the EU copyright framework, based on market legal and economic studies, with a view to arriving at a decision in 2014 on whether to table legislative proposals. A number of issues are being examined: territoriality in the Internal Market; the need for further harmonisation, including as regards limitations and exceptions to copyright in the digital age and how to improve the effectiveness and efficiency of enforcement.

On the other hand, the Commission will address a number of issues on which rapid progress is necessary and possible. A structured stakeholder dialogue was launched to that effect by the Commission on 4 February 2013, with the specific objective of delivering, by the end of 2013, practical industry-led solutions to a number of issues, without prejudice to further public policy action, including legislative reform, as appropriate. These issues relate to: cross-border access and the portability of services; user-generated content and licensing for small-scale users of protected material; audiovisual sector and cultural heritage institutions; and text and data mining.

As part of this exercise, a report will be published on the outcome of the consultation launched by the Green Paper on the online distribution of audiovisual works in early 2013. This consultation addressed a number of the issues which are now being

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<sup>14</sup> COM(2011) 287 final [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf)

<sup>15</sup> Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works [http://ec.europa.eu/internal\\_market/copyright/orphan\\_works/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/orphan_works/index_en.htm)

<sup>16</sup> COM(2012)789 final [http://ec.europa.eu/internal\\_market/copyright/licensing-europe/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/licensing-europe/index_en.htm)

examined from a legal and economic perspective, notably the territoriality of rights and the possible effects of the European Court of Justice *Premiere League* ruling<sup>17</sup>.

Finally, the issue of private copying levies has been the subject, throughout 2012, of an industry mediation process, fostered by the Commission and led by former Commissioner Antonio Vitorino. Mr. Vitorino presented his report on this issue on 31 January 2013. His recommendations are being analysed by the Commission and will be discussed with Member States.

### **Other actions:**

#### E-books:

The Commission services organised a CEO-level meeting on 26 June 2012 in order to tackle issues related to the e-book market and is currently reflecting on the progress in and potential barriers associated with the eBook market and is discussing a series of concrete actions to follow-up on the June eBook roundtable<sup>18</sup> with external stakeholders.

In the issue of competition enforcement, on 12 December 2012, the Commission adopted a decision that rendered legally binding the commitments offered by Apple Inc. and four international e-book publishers: Simon & Schuster (CBS Corp.), Harper Collins (News Corp.), Hachette Livre (Lagardère Publishing), Verlagsgruppe Georg von Holtzbrinck (owner of inter alia Macmillan).<sup>19</sup>

In January 2010, Apple and the four international e-book publishers had jointly switched from the "wholesale model"<sup>20</sup> to agency contracts that all contained the same key terms. Under this "agency model", the four publishers determined the retail prices for e-books according to pricing rules in the agency contracts. Those pricing rules were designed in a way that resulted in higher retail prices than those offered by certain major retailers at the time. In some countries in the EEA, they were designed in such a way as to exclude any possibility of lower prices being offered to consumers in the first place.

In order to address the Commission's concerns, Apple and the four international e-book publishers agreed to terminate all their existing agency agreements that included the retail price restrictions and the pricing rules the Commission had objected to. They have also committed, for a period of five years, not to enter into any new agreements containing the pricing rules the Commission had objected to. They further agreed, for a period of two years, to allow retailers to offer retail price discounts for e-books up to an amount equal to the commission the retailer receives from the publisher over a one-year period. The commitments ended the practices that were at the origin of the Commission's concerns and restored conditions that will

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<sup>17</sup> Judgment of 4 October 2001, Joined Cases C-403/08 and C-429/08.

<sup>18</sup> [http://ec.europa.eu/information\\_society/media\\_taskforce/publishing/e\\_book/index\\_en.htm](http://ec.europa.eu/information_society/media_taskforce/publishing/e_book/index_en.htm)

<sup>19</sup> See IP/11/1509. See IP/11/1509. [http://europa.eu/rapid/press-release\\_IP-11-1509\\_en.htm](http://europa.eu/rapid/press-release_IP-11-1509_en.htm)

<sup>20</sup> In the wholesale model, retailers would buy e-books from publishers and then freely determine the retail prices for those e-books when sold to consumers



allow the e-books market to reset itself. Where permitted by national retail price laws for e-books, this has the potential to lower e-book prices for consumers in the EEA<sup>21</sup>.

**Main Action 3: ensure that the rules on selective distribution are applied rigorously and fight unfair business practices. In parallel to this, ensure that access for citizens to online services is not undermined by anti-competitive practices.**

The Commission services continuously monitor the effect and application of its competition rules, including with regard to the use of selective distribution systems in the online world. In practice, this is done through its own cases, through discussions with national competition authorities within the European Competition Network, and discussions with stakeholders more generally. Moreover, the national competition authorities inform the Commission of their case investigations and their envisaged decisions applying EU antitrust rules. Cases are discussed as part of the activities of the European Competition Network (ECN). There is also a working group within the ECN to discuss issues related to distribution agreements. While current discussions have not indicated a widespread problem due to **selective distribution systems in the online world**, the Commission services will continue and strengthen their discussions within the ECN on online sales issues and possible trends, to ensure that the competition rules continue to be rigorously applied in the future.

The Commission adopted on 31 January 2013 a Green Paper launching a consultation on **business-to-business unfair trading practices<sup>22</sup> in the food and non-food supply chain**. Unfair trading practices are practices that grossly deviate from good commercial conduct and are contrary to good faith and fair dealing. Such practices include failure to provide sufficient information about contract terms, demanding payments for goods or services that are of no value to the contractor, unilateral or retroactive changes of contract terms, as well as payments for fictitious services and preventing contractors from sourcing from other Member States thus leading to territorial partitioning of the Single Market.

The three-month long consultation will help the Commission services to assess the magnitude of the unfair trading practices issue and gather evidence on its effect on the economy and on cross-border activity. They will examine the effectiveness of self-regulatory and legislative frameworks put in place to address those practices at national level and will look into the question of whether these divergent approaches may lead to a fragmentation of the Single Market.

#### **Other actions:**

##### Net neutrality:

In December 2011, the Body of European Regulators for Electronic Communications (BEREC), jointly with the Commission services, launched a Europe-wide data

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<sup>21</sup> For further info see IP/12/1367 [http://europa.eu/rapid/press-release\\_IP-12-1367\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1367_en.htm) and MEMO/12/983 of 13/12/2012. [http://europa.eu/rapid/press-release\\_MEMO-12-983\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-983_en.htm)

<sup>22</sup> COM (2013) 37/2 [http://ec.europa.eu/internal\\_market/retail/docs/130131\\_unfair-trading-practices-green-paper\\_en.pdf](http://ec.europa.eu/internal_market/retail/docs/130131_unfair-trading-practices-green-paper_en.pdf)

collection exercise on traffic management practices. On 29 May 2012, BEREC transmitted a report with the final results of the questionnaire on traffic management practices to the Commission services and published it on its website. According to the data gathered by BEREC, the majority of ISPs offer unrestricted Internet access. However, certain restrictions affect a significant number and portion of users, especially in the mobile sector. More than 21% of subscribers are affected by peer-to-peer (P2P) restrictions on fixed networks and Voice over Internet Protocol (VoIP) restrictions on mobile networks. Additionally more than 36% of users are experiencing restrictions regarding P2P on mobile networks. Such restrictions affect access to several legal services that use P2P technology and often seem to be implemented to restrict competition, for instance in the voice market.

Moreover, a recent Commission in-depth market study on internet services provision from a consumer perspective showed that very little information was provided to consumers on internet providers' websites on issues such as blocking/slowing down of services and download limits (94% and 56% respectively of websites assessed by mystery shoppers provided no information on the aforementioned issues)<sup>23</sup>.

BEREC also investigated other aspects related to net neutrality, including transparency and switching. It highlighted the importance of transparent information in this context and it also identified barriers to switching that still exist in European Member States.

Following BEREC's work in this field, the Commission services launched a public consultation on "specific aspects of transparency, traffic management and switching in an Open Internet" on between 23 July and 15 October 2012. The Commission services are currently working on guidance that will include measures related to transparency, switching and the responsible use of traffic management tools.

## VAT

In the area of **VAT rates**, a review of the current VAT rates structure is one of the priority actions indicated by the Commission in its Communication on the future of VAT<sup>24</sup>. This review is to be based on a thorough impact assessment covering all aspects and on three guiding principles, one of which is that similar goods and services should be subject to the same VAT rate and progress in technology should be taken into account in this respect, so that the challenge of convergence between the on-line and the physical environment is addressed.

In this context, the Commission services launched on 8 October 2012 a **public consultation for a review of the existing legislation on reduced VAT rates**<sup>25</sup>. Citizens, businesses and other stakeholders were asked for their opinion on certain

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<sup>23</sup> The functioning of the market for internet access and provision from a consumer perspective, study on behalf of the European Commission, DG SANCO (expected to be published in April 2013). The absence of information should not be necessarily interpreted to mean that the vast majority of providers nonetheless do apply blocking or throttling policies or download limits.

<sup>24</sup> COM(2011)851 final COM(2011)851 final

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/key\\_documents/communications/com\\_2011\\_851\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/communications/com_2011_851_en.pdf)

<sup>25</sup> [http://ec.europa.eu/taxation\\_customs/common/consultations/tax/2012\\_vat\\_rates\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/2012_vat_rates_en.htm)

[http://ec.europa.eu/taxation\\_customs/common/consultations/tax/2012\\_vat\\_rates\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/2012_vat_rates_en.htm)

reduced VAT rates, including how similar goods and services should be treated for VAT purposes, taking into account technological developments. The consultation ended on 4 January 2013. In March 2013, an expert seminar on VAT and eBooks, online newspapers and magazines discussed the cost structures, pricing and the impact on VAT rules and notably a possible alignment of offline and online VAT rates. The results of the consultation and seminar and a number of further studies that will be carried out as part of the impact assessment, will feed into a possible new proposal on reduced VAT rates.

As regards the **one-stop-shop concept**, the smooth introduction of the mini One Stop Shop (OSS) in 2015 is another priority action indicated by the Commission in the Communication on the future of VAT. In this context, on 13 January 2012 the Commission presented a proposal for a Council Implementing Regulation<sup>26</sup> on the mini OSS which was adopted by the Council on 9 October 2012.<sup>27</sup>

Furthermore, on 13 September 2012 a Commission Implementing Regulation<sup>28</sup> which determines the necessary technical details for exchanges of data under the mini OSS was adopted under the “Comitology” procedure.

Additionally, a second proposal for a Council Implementing Regulation on place-of-supply related issues and the application of the new 2015 place of taxation rules was adopted by the Commission in December 2012. Negotiation has started in the Council.

Finally, as regards the broadening of the mini OSS concept to, amongst others, distance sales of goods, this can only be envisaged once the Commission has assessed whether the mini OSS (to be implemented by 2015) works properly. Consequently progress on this issue can only be reported after 2015.

#### Public sector information:

The revision of the Public Sector Information (PSI) Directive is a part of a wider Open Data Strategy, adopted by the Commission on 12 December 2011, which includes support to R&D on data along with the development of European data-portals and other actions designed to facilitate EU-wide access to PSI and to stimulate the creation of information products and services based on PSI re-use.

The **proposal for the revision of the Public Sector Information (PSI) Directive**<sup>29</sup> was published on 12 December 2011. It seeks to provide an updated legal framework

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<sup>26</sup> Proposal for a Council Regulation amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services.

[http://ec.europa.eu/taxation\\_customs/common/legislation/proposals/taxation/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/legislation/proposals/taxation/index_en.htm)

<sup>27</sup> Council Regulation (EU) No 967/2012. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:290:0001:0007:EN:PDF>

<sup>28</sup> Commission Implementing Regulation (EU) No 815/2012 of 13 September 2012 laying down detailed rules for the application of Council Regulation (EU) No 904/2010, as regards special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons (OJ L 249, 14.9.2012, p. 3–10). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:249:0003:0010:EN:PDF>

<sup>29</sup> [http://ec.europa.eu/information\\_society/policy/psi/revision\\_directive/index\\_en.htm](http://ec.europa.eu/information_society/policy/psi/revision_directive/index_en.htm)

which will greatly contribute to bringing the economic value of PSI to the market. It will take the harmonisation of the rules that public sector bodies have to respect when they influence the market by selling information or making it available for re-use one step further. The legislative procedure is expected to end in Spring 2013.

### 3.2 IMPROVE OPERATOR INFORMATION AND CONSUMER PROTECTION

**Main action 4: improve training for online traders in their obligations and the opportunities offered by the Digital Single Market, in particular through the Enterprise Europe Network with the assistance of the European Consumer Centres Network (ECC-Net) as regards issues relating to consumers, and through the publication of a special guide (2012).**

The European Consumer Centre Network (ECC-Net) has continued to raise awareness of traders of their obligations, including through the publication of specific reports. The report “European Online Marketplace – Consumer Complaints 2010-2011”<sup>30</sup> gives details on the 17,000 complaints that the ECCs receive every year concerning online shopping (two thirds of the issues relate to product shipping errors and defective products and services) and contains guidelines for on-line retailers. In 2012, ECCs received more than 32,000 complaints, 60% of which related to a purchase on the internet<sup>31</sup>.

In December 2012, the Commission adopted, in line with its commitment in the Digital Agenda for Europe, the Code of EU online rights. The Code, integrated in the Your Europe Portal for Citizens, compiles the basic set of rights existing in EU legislation and related to the digital environment. The objective of the Code is to provide simple explanations of online legal rights and obligations and to set these out in a transparent and understandable manner<sup>32</sup>.

Furthermore, the Commission services together with stakeholders took stock of practices made to improve retailers’s awareness of their duties, obligations and opportunities when going on-line, in order to identify gaps and propose new solutions. One of the actions following the stock-taking could be a dedicated guide. This work will continue in 2013.

Finally, an awareness-raising campaign in the framework of the Year of Citizenship will begin in December 2013. The campaign also inform traders and consumers on consumer rights.

**Main action 5: through dialogue with the stakeholders, develop codes of good conduct, good practice guides and guidelines giving consumers access to transparent and reliable information and allowing easier comparison of the prices, quality and durability of goods and services (2013-2014).**

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<sup>30</sup> Published in September 2012, [http://ec.europa.eu/consumers/ecc/index\\_en.htm](http://ec.europa.eu/consumers/ecc/index_en.htm)

<sup>31</sup> [http://ec.europa.eu/consumers/ecc/docs/report\\_ecc-net\\_2012\\_en.pdf](http://ec.europa.eu/consumers/ecc/docs/report_ecc-net_2012_en.pdf)

<sup>32</sup> [http://europa.eu/youreurope/citizens/shopping/buy-sell-online/index\\_en.htm](http://europa.eu/youreurope/citizens/shopping/buy-sell-online/index_en.htm)

The dialogue process was launched at the workshop on comparison tools which was part of the 2012 European Consumer Summit. Three other workshops took place in October and November 2012, and in February 2013.

The purpose of the **Multi-Stakeholder Dialogue on Comparison Tools (MSDCT)** is to:

- provide a better understanding of the functioning of the various types of comparison tools;
- analyse the roles and interaction between all the stakeholders involved in comparison websites, retailers, regulators, consumer organisations;
- map best practices in the comparison of products and services across different sectors and
- identify potential areas of improvement.

Parties to the Dialogue exercise represent a wide range of interests: participants include representatives of consumer organisations, national authorities and EU-level business associations. Private operators of comparison websites have also been invited as speakers.

The initiative is horizontal in scope, covering various sectors such as retail, travel, energy and electronic communications. How to best include parameters such as price, quality and sustainability, how to display information online and how to enable further development of cross-border comparisons are amongst the key questions addressed.

A report containing the main findings, conclusions and recommendations from the MSDCT was presented at the Consumer Summit in March 2013. This report will be a starting point for the Commission to decide on whether action is needed at EU-level, and should possibly serve as a basis for developing a set of horizontally applicable EU-wide guidelines at a later stage.

The action was included in the May 2012 European Consumer Agenda and is part of the recently adopted European Retail Action Plan<sup>33</sup>.

**Main action 6: boost the capacity of the CPC (Consumer Protection Cooperation) network, equipping it with instruments able to ensure that the relevant legislation is implemented in a digital environment at European level, in particular by financing joint projects aimed at encouraging skills development for network researchers, training and the exchange of good practices (2012-2014).**

In order to increase internet enforcement capability in the EU, the latter co-funds a **large cooperation project involving a partnership of 16 national consumer protection and enforcement authorities**. In 2012, the emphasis was placed on e-enforcement training, development of on-line resources available to enforcers and a

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<sup>33</sup> COM(2013) 36/2 [http://ec.europa.eu/internal\\_market/retail/docs/130131\\_retail-action-plan\\_en.pdf](http://ec.europa.eu/internal_market/retail/docs/130131_retail-action-plan_en.pdf)

methodological framework to ensure early identification of emerging trends. These activities will be continued in 2013. The results of the project are shared with the enforcement authorities' network set-up under the Consumer Protection Cooperation Regulation (CPC)<sup>34</sup>. In June 2012, the CPC network performed an EU-wide investigation ("sweep") into web-sites offering digital products, such as games, videos or music downloads, in order to verify compliance of such websites with EU consumer protection legislation. Of the 333 websites checked, 76% were flagged for further investigation and will be followed-up by the competent national authorities in 2012 and 2013<sup>35</sup>.

**Main action 7: adopt a "European Consumer Agenda" putting forward a strategy and initiatives to place consumers at the heart of the Single Market, including digital issues, in particular by improving consumers' capacity for action and appropriate protection of their rights (2012).**

The Commission adopted the Communication "A European Consumer Agenda – Boosting confidence and growth"<sup>36</sup> on 22 May 2012. It is accompanied by a Report on Consumer Policy (July 2010 – December 2011) and a Staff Working Document on knowledge-enhancing aspects of consumer empowerment.

The Agenda presents a comprehensive vision for EU consumer policy in the years ahead. It aims at maximising consumer participation and trust in the Single Market. Alongside these general principles, the Agenda also presents a number of specific actions to be implemented between 2013 and 2014.

The Agenda contains multiple references to the digital revolution, as a major societal and economic challenge that a modern consumer policy must take into account. Key actions announced to address digital issues include:

- The development of Commission guidelines by 2014 to help national enforcement authorities to correctly implement EU rules and particularly the new rules in the Consumer Rights Directive concerning the consumer information requirements in respect of digital products. The purpose of the guidelines will be to make the information obligations, which traders have vis-à-vis consumers, work effectively in practice and easily enforceable. In addition, this initiative aims at achieving a better presentation of the key information on digital products, thus facilitating comparability of different offers.
- The development of an interactive platform for exchanging best practices and distributing consumer education materials amongst teachers and other professionals, aimed inter alia at improving the digital literacy of young consumers.
- A dialogue with intermediaries and traders with a view to developing codes of good conduct, good practices or guidelines for price, quality and sustainability

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<sup>34</sup> Regulation 2006/2004/EC [http://ec.europa.eu/consumers/prot\\_rules/admin\\_coop/index\\_en.htm](http://ec.europa.eu/consumers/prot_rules/admin_coop/index_en.htm)

<sup>35</sup> [http://ec.europa.eu/consumers/enforcement/sweeps\\_en.htm](http://ec.europa.eu/consumers/enforcement/sweeps_en.htm)

<sup>36</sup> COM(2012) 225 final. COM(2012) 225 final. [http://ec.europa.eu/consumers/strategy/index\\_en.htm#agenda](http://ec.europa.eu/consumers/strategy/index_en.htm#agenda)

comparison of products and services, including through comparison websites (see above at page 11).

**Main action 8: present a European action plan for online gambling which will focus on administrative cooperation, consumer protection and the development of a legal market (2012).**

On 23 October 2012, the European Commission adopted the Communication “Towards a comprehensive European framework on online gambling”<sup>37</sup>. Based on an in-depth public consultation, and recognised regulatory, technical and social challenges, the Communication sets out a series of initiatives designed to enhance legal clarity throughout the EU and establish evidence based policies for the benefit of national authorities, operators, consumers and related industries such as payment service or media service providers. Five action areas are prioritised in the Communication to address the challenges faced at the EU and national level. These focus on:

- compliance of national regulatory frameworks with EU law
- enhancing administrative cooperation and efficient enforcement
- protecting consumers and citizens, minors and vulnerable groups
- preventing fraud and money laundering
- safeguarding the integrity of sports and preventing match-fixing

The Action Plan does not propose EU-wide legislation on online gambling, but proposes a comprehensive set of actions and common principles on protection and prevention. Three Commission Recommendations addressed to the Member States are envisaged. These should cover i) common protection of consumers, ii) responsible gambling advertising and iii) the prevention of and measures against betting-related match-fixing. They would also facilitate administrative cooperation between gambling regulators and develop regulatory dialogue with third countries.

Other measures foreseen include, inter alia, enhancing the exchange of information and best practice on enforcement measures; support for the benchmarking and testing of parental control tools; the assessment of the market performance of online gambling services; the extension of the scope of the anti-money laundering directive and the promotion of international cooperation for the prevention of match-fixing. The Commission has already established an expert group to facilitate the exchange of experience on regulation between Member States. This will help develop a well-regulated, safer online gambling sector in the EU, which will in turn dissuade consumers from using unregulated sites.

**Main action 9: Via the implementation of the Directive on falsified medicinal products, ensure adequate protection for patients purchasing medicinal products online by: (i) contributing to the creation of confidence logos which**

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<sup>37</sup> Commission Communication “Towards a comprehensive European framework for online gambling” COM (2012)596 final [http://ec.europa.eu/internal\\_market/services/gambling\\_en.htm](http://ec.europa.eu/internal_market/services/gambling_en.htm)

**identify sites providing the public with legal offers of medicinal products through distance sales (2013-2014) and, primarily by means of a report the Commission will submit to the European Parliament and the Council, (ii) monitoring developments in the problem of the falsification of medicinal products through distribution channels, and (iii) examining any specific risks linked to the online sale of medicinal products.**

The Commission conducted a public consultation on a common logo for legally-operating online pharmacies/retailers offering medicinal products for human use for sale at a distance. The consultation period ended on 17 January 2013. The Commission received 30 responses which have been made public<sup>38</sup>. There was overall support for the Commission proposal and the respondents provided useful feedback on details of the common logo for European online pharmacies/retailers of medicines. The Commission services will now start the preparation for the implementing act as foreseen in the Directive.

#### **Other actions:**

##### Transposition of the Consumer Rights Directive:

The E-commerce Communication called for quick and efficient transposition of the Directive on Consumer Rights<sup>39</sup> which Member States must transpose by December 2013 and apply from June 2014. This Directive will strengthen consumers' rights when buying on the Internet. Consumers will have to be provided with essential information before they order goods or services online, including about the functionality and interoperability of digital content. The new Directive furthermore bans pre-ticked boxes when offering additional services, internet cost traps and charges of which the consumer was not informed in advance. The further harmonisation of the rules on distance contracts provided in the Directive means a single set of core rules across the EU that will not only promote consumers' trust but also lower the compliance and administrative burden for businesses in cross-border e-commerce. To assist Member States in their transposition work and to provide the necessary guidance, the Commission is holding both multilateral and bilateral meetings with Member States.

##### Common European Sales Law:

The Proposal for a Regulation on a Common European Sales Law<sup>40</sup> adopted on 10 October 2011 provides a uniform optional set of sales law rules which can be used for cross-border sales of tangible movable goods and of digital content. It aims at facilitating cross border trade and especially online commerce. When consumers agree to it, traders will thus be able to sell their goods or digital content to consumers or other business in other EU Member States on the basis of one single set of rules. This Common European Sales Law will be optional: Parties to a contract may choose it, but will not be obliged to do so. In order to protect consumers, it foresees a rather

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<sup>38</sup> [http://ec.europa.eu/health/human-use/falsified\\_medicines/developments/2013-02\\_common\\_logo\\_pc\\_en.htm](http://ec.europa.eu/health/human-use/falsified_medicines/developments/2013-02_common_logo_pc_en.htm)

<sup>39</sup> Directive 2011/83/EU, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>

<sup>40</sup> COM (2011) /635 final [http://ec.europa.eu/justice/contract/index\\_en.htm](http://ec.europa.eu/justice/contract/index_en.htm)



high level of consumer protection. The proposal is currently being negotiated in the European Council and the European Parliament.

Data protection reform:

As regards the protection of personal data, the European Commission adopted on 25 January 2012 a comprehensive reform of data protection rules, aiming in particular at strengthened online privacy rights and boosting Europe's digital economy.

The Commission's proposals update and modernise the principles enshrined in the Data Protection Directive 95/46/EC, to guarantee privacy rights in the future. They include a policy Communication setting out the Commission's objectives and two legislative proposals: a General Data Protection Regulation proposing a general EU framework for data protection<sup>41</sup> and a Directive on protecting personal data processed for the purposes of the prevention, detection, investigation or prosecution of criminal offences and related judicial activities<sup>42</sup>.

The proposed General Data Protection Regulation, by providing a single law, will substantially reduce the current fragmentation and costly administrative burdens, leading to savings for businesses of around €2.3 billion a year, and will help reinforce consumer confidence in online services, thus providing a much needed boost to growth, jobs and innovation in Europe.

The reform proposals are currently being discussed by the European Parliament and the Council<sup>43</sup>.

Electronic identification and signatures:

On 4 June 2012, the Commission adopted a proposal on a regulation on electronic identification and trust services for electronic transactions in the internal market<sup>44</sup>.

The regulation aims to ensure mutual recognition and acceptance of electronic identification across borders; give legal effect and mutual recognition to trust services including enhancing current rules on e-signatures and providing a legal framework for electronic seals, electronic time stamps, electronic document acceptability, electronic delivery service and website authentication. The legislative process is on-going.

### 3.3 RELIABLE AND EFFICIENT PAYMENT AND DELIVERY SYSTEMS

**Main Action 10: develop a strategy for the integration of the markets for payments by card, internet or mobile phone, on the basis of a Green Paper adopted at the same time as this Communication with the aim of (i) assessing**

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<sup>41</sup> COM(2012)11 final COM(2012)11 final [http://ec.europa.eu/justice/data-protection/document/review2012/com\\_2012\\_11\\_en.pdf](http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf)

<sup>42</sup> COM (2012)010 final COM (2012)010 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0010:FIN:EN:PDF>

<sup>43</sup> For further info, see [http://ec.europa.eu/justice/data-protection/index\\_en.htm](http://ec.europa.eu/justice/data-protection/index_en.htm)

<sup>44</sup> COM (2012) 238/2 [http://ec.europa.eu/information\\_society/policy/esignature/eu\\_legislation/regulation/index\\_en.htm](http://ec.europa.eu/information_society/policy/esignature/eu_legislation/regulation/index_en.htm)

**the barriers to entry and competition on these markets and proposing legislative action where necessary, (ii) making sure that these payment services are transparent for consumers and sellers, (iii) improving and accelerating the standardisation and interoperability of payments by card, internet or mobile phone, and (iv) increasing the level of security of payments and data protection. The Commission will present the conclusions of this exercise and the next stages by mid-2012.**

As pointed out in its Green Paper on card, internet and mobile payments<sup>45</sup>, the Commission is working to promote an integrated European market for card, internet and mobile payments for the benefits of consumers and merchants. The benefits stemming from a more integration market include:

- More competition between payment service providers and a level playing field between incumbent and new players in this field.
- More choice and transparency in payment services for consumers and merchants.
- More payment service innovation and security.

The Green Paper launched by a public stakeholder consultation which helped identifying a number of key hurdles on the path towards the market integration of card, internet and mobile payments most of which are relevant in the context of e-commerce and online services. These include:

- Restricted market access for new, card or online-banking based, payment service providers;
- Obstacles for (web) merchants who wish to benefit from the cross-border or central acquiring of card payments;
- Standardisation and inter-operability gaps for the provision of card, internet and mobile payments across the EU;
- Non-transparent and possibly excessive charging between payment service providers and merchants and between merchants and consumers.

The Single Market Act II announced that the Commission will propose a revision of the Payment Services Directive and a legislative proposal on multi-lateral interchange fees (MIFs). These proposals are scheduled for adoption in Spring 2013.

**Main action 11: The Commission will, based on a Green Paper, initiate a consultation in 2012 on the delivery of packages, in particular cross-border, drawing on the results of the study on the costs of cross-border postal services, with a view to identifying possible solutions to the problems encountered by businesses and consumers. The Commission will present the conclusions of this exercise and the next steps by the end of 2012.**

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<sup>45</sup> COM (2011) 941 [http://ec.europa.eu/internal\\_market/payments/cim/index\\_en.htm](http://ec.europa.eu/internal_market/payments/cim/index_en.htm)

On 29 November 2012, the Commission adopted a Green Paper with a view to launching a public consultation on the delivery of parcels, with special emphasis on cross-border issues and e-commerce needs<sup>46</sup>.

The Commission aims to collect information on the current state of the delivery market for products bought online, and identify any potential hurdles to the creation of an EU-wide integrated parcel delivery market. Furthermore, it seeks stakeholders' views on how best to serve the interests of customers, businesses and end-consumers.

On the basis of the information collected, the Commission services are currently working on identifying solutions to help improve cross-border parcel delivery, notably with regard to prices, "convenience" for customers, interoperability and any regulatory barriers.

### 3.4 COMBATING ABUSE AND RESOLVING DISPUTES MORE EFFECTIVELY

#### **Main action 12: The Commission will adopt a horizontal initiative on notice-and-action procedures (2012).**

In response to the 2010 public consultation on e-commerce<sup>47</sup>, the vast majority and a wide variety of stakeholders indicated, in their contributions to the consultation, that changing the E-commerce Directive (ECD) would be undesirable. However, they also indicated that the functioning of notice-and-action procedures, in the context of Article 14 ECD, should be improved. In particular they considered that there is too much regulatory fragmentation and legal uncertainty, growing costs due to inefficiencies, too many instances of too slow action against illegal content and instances of action against legal content<sup>48</sup>.

In response to this consultation, the Commission announced an initiative on notice-and-action procedures without revising the ECD. The objective of the initiative will be to enhance, where possible, legal certainty for all parties involved in notice-and-action procedures (including individual citizens).

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<sup>46</sup> COM(2012) 698 Final. COM (2012) 698 Final. [http://ec.europa.eu/internal\\_market/e-commerce/parcel-delivery/index\\_en.htm](http://ec.europa.eu/internal_market/e-commerce/parcel-delivery/index_en.htm)

<sup>47</sup> Public consultation on e-commerce of 2010: [http://ec.europa.eu/internal\\_market/consultations/docs/2010/e-commerce/summary\\_report\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2010/e-commerce/summary_report_en.pdf)[http://ec.europa.eu/internal\\_market/consultations/docs/2010/e-commerce/summary\\_report\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2010/e-commerce/summary_report_en.pdf)

<sup>48</sup> "Notice-and-action" ("N&A") procedures are put in place by online intermediaries to allow a citizen or organisation to notify illegal content. Such procedures are usually adopted in the context of the liability regime of Article 14 of the E-commerce Directive (ECD). According to that provision, online intermediaries providing "storage of information supplied by a recipient of the service" (hosting services such as social networks, web hosting or e-commerce platforms), cannot be held liable for illegal content that they store if they fulfil one of the following two conditions :

- they do not have actual knowledge of illegal activity or information and, as regards claims for damages, are not aware of facts and circumstances from which the illegal activity or information is apparent; or
- on obtaining such knowledge or awareness, they act expeditiously to remove or disable access to the information.

In the L'Oréal / eBay case (July 2011) the Court clarified that "awareness" of illegal content can in particular be obtained by a notice that is "sufficiently detailed and adequately substantiated". A hosting service provider may thus have to act (by removing or disabling access to content) following the receipt of a notice. A notice may concern any type of illegal content.

Since the announcement of the initiative, there has been **extensive consultation of stakeholders**, in particular in the following forms:

- *Questionnaires on N&A procedures.* This questionnaire asked stakeholders to provide facts and figures concerning notice-and-action procedures. It was sent to organisations that submit notices of illegal content to online intermediaries and to online intermediaries. Stakeholders have asked for their responses to be treated confidentially. 70 responses were received.
- *Two experts' workshops on N&A procedures.* Participants in these workshops, working e.g. for hosting service providers and notifiers or civil rights organisations, were invited because of their specific expertise. They exchanged best practices on notifying illegal content (first workshop) and acting on notices about alleged illegal content (second workshop).
- *A public consultation on N&A*<sup>49</sup>. This public consultation closed on 11 September 2012 and generated 1060 responses.

On the basis of the information obtained through these consultations and other information, the Commission services are working on an **impact assessment on notice-and-action procedures**.

#### **Other actions:**

##### Civil enforcement of IPR in the Union

The online infringement of intellectual property rights is still a matter of direct concern. While the majority of e-commerce is completely legitimate, illicit or fraudulent commercial traders in counterfeit goods are also exploiting the advantages of e-commerce, by using the internet to offer goods and services which are infringing IPRs.

An extensive consultation was carried out on the application of Directive 2004/48 on civil IPR enforcement in 2012 culminating with a conference on 26 June 2012. It was decided to continue with the on-going public consultation on the functioning of the current civil enforcement system in the EU. In December 2012, the Commission services launched a survey to gather evidence to be used for a detailed and holistic evaluation of the efficiency of existing national IP civil enforcement systems, including those implementing IPRED. The survey also raised issues such as access to justice by SMEs and costs and duration of proceedings. The results of the survey will be made publicly available in June 2013, in line with the Commission's transparency procedures.

Alongside harmonised measures, remedies and sanctions provided for by civil law, voluntary collaborative approaches can strengthen the protection of both right holders and consumers. For example, the Memorandum of Understanding on the sale of counterfeit goods via the Internet concluded between 33 companies and trade associations and covering 39 different internet sites in Europe, focusses on disrupting and deterring the supply side of the online counterfeit market and improving

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<sup>49</sup> [http://ec.europa.eu/internal\\_market/consultations/2012/clean-and-open-internet\\_en.htm](http://ec.europa.eu/internal_market/consultations/2012/clean-and-open-internet_en.htm)

protection for consumers who unintentionally buy a counterfeit product on-line. On 18 April 2013 the Commission reported on the functioning of this MoU<sup>50</sup>.

### Alternative dispute-settlement systems<sup>51</sup>

In December 2012, the co-legislator reached an agreement on two proposals on alternative means to resolve consumer disputes (ADR-ODR)<sup>52</sup>. The legislative package includes the Regulation establishing an Online Dispute Resolution for consumer disputes stemming from online sales or service contracts in the Single Market.

After the formal adoption of the two legal texts, expected in April 2013, the implementation phase will commence with a view to preparing the setting up of the European online dispute resolution platform established by the ODR regulation.

The Commission services have gathered information and data as regards ADR systems for disputes between businesses (B2B ADR) via a SME-panel survey and a Eurobarometer survey. A workshop with ADR experts took place in Brussels on 28 February 2012. The Commission services also met bilaterally with stakeholders.

**Main action 13: in 2012, propose an overall strategy on internet security in Europe aimed at better protection against cyber attacks in the EU. The establishment of the European Cybercrime Centre by 2013 will play a particularly important role in this.**

In September 2010, the Commission put forward a **proposal for a Directive on cyber attacks**<sup>53</sup>, updating the Framework Decision on attacks against information systems, in order to deal with the growing number of large-scale cyber attacks against businesses but also increasingly against governments as for example, the cyber attacks against Estonia in 2007. The main novelty of the proposal is the criminalisation of the use as well as the production and sale of tools (widely known as 'botnets') to carry out attacks against information systems. The Council and the European Parliament reached a political agreement on a compromise text in early June 2012 and it is hoped that it will be adopted shortly.

In order to enhance operational capabilities, the Commission established a **European Cybercrime Centre**, hosted within Europol and officially launched in January 2013. The Centre acts as the focal point in the fight against cybercrime in the Union and will have four core functions:

- To serve as the European cybercrime information focal point;
- To pool European cybercrime expertise to support Member States;

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<sup>50</sup> COM(2013) 209

<sup>51</sup> Known as Alternative dispute resolution (ADR)/On line dispute resolution (ODR).

<sup>52</sup> COM(2011) 793 final and COM(2011) 794 final COM(2011) 793 final [http://ec.europa.eu/consumers/redress\\_cons/docs/directive\\_adr\\_en.pdf](http://ec.europa.eu/consumers/redress_cons/docs/directive_adr_en.pdf) and COM(2011) 794 final [http://ec.europa.eu/consumers/redress\\_cons/docs/odr\\_regulation\\_en.pdf](http://ec.europa.eu/consumers/redress_cons/docs/odr_regulation_en.pdf)

<sup>53</sup> COM (2010) 517 [http://ec.europa.eu/dgs/home-affairs/policies/crime/1\\_en\\_act\\_part1\\_v101.pdf](http://ec.europa.eu/dgs/home-affairs/policies/crime/1_en_act_part1_v101.pdf)

- To provide support to Member States' cybercrime investigations;
- To become the collective voice of European cybercrime investigators (across law enforcement and the judiciary might delete).

Other functions of the Centre will include the strengthening of forensic law enforcement capabilities for cybercrime investigations, and better cooperation between relevant agencies, including Europol, Eurojust, CEPOL and ENISA.

On 7 February 2013, the Commission and the High Representative for Foreign and Security Policy adopted a comprehensive Cyber-Security Strategy of the European Union entitled “an open, safe and secure cyberspace”. It represents the EU’s comprehensive vision on how best to prevent and respond to cyber disruptions and attacks. Specific actions are aimed at enhancing cyber resilience of information systems, reducing cybercrime and strengthening EU international cyber-security policy and cyber defense while respecting and promoting fundamental rights. The Strategy pursues the following key objectives:

- Achieving "cyber resilience", by increasing capabilities, preparedness, cooperation, and awareness in the field of Network and Information Security, for the public and private sectors both at national and EU level;
- Substantially reducing cybercrime by strengthening legislation, by further building the expertise of those in charge of investigating and prosecuting cybercrime, by adopting a more coordinated approach between Law Enforcement Agencies across the Union, and by enhancing cooperation with other actors. The European Cybercrime Centre will be one of the main tools in this regard;
- Developing an EU Cyber Defence Policy and capabilities, inter alia in the framework of the Common Security and Defence Policy;
- Fostering industrial and technological resources for cybersecurity: stimulate the emergence of a European industry and market for secure ICT and contribute to the growth and competitiveness of the EU economy;
- Increasing public and private spending on Research and Development (R&D) to improve cybersecurity and combat cybercrime and cyber terrorism;
- Establishing a coherent international cyberspace policy for the European Union and promoting core EU values, including by proposing norms for responsible behaviour, and encouraging the application of existing international cyberspace laws in accordance with the EU acquis and assisting countries outside the EU in building cybersecurity capacity.

In parallel to the Strategy, the Commission has proposed a legislative initiative on a high level of network and information security across the Union.

### 3.5 DEPLOY HIGH-SPEED NETWORKS AND ADVANCED TECHNOLOGICAL SOLUTIONS

**Main action 14: The Commission will strengthen and facilitate the development of information and communication structures in 2012 by**

**(i) in the context of the Connecting Europe Facility, guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks**

On 19 December 2012, the Commission adopted the new EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks<sup>54</sup>. These will help Member States achieve very fast broadband connections throughout the EU, an essential element for future economic growth. These new rules will allow for well-designed state aid targeted at market failures without crowding out private investment in competitive areas.

The guidelines were drafted after an intensive dialogue with all stakeholders and have the following principles and priorities:

- Technological neutrality, ultra-fast broadband networks,
- Step change to connectivity,
- Reinforcement of open access,
- Transparency.

**(ii) in the context of the European Cohesion Fund, draft guidelines for smart specialisation strategies which must be implemented in order to benefit from regional funding,**

Cohesion policy and specifically the European Regional Development Fund (ERDF) provide 4.2% of the total cohesion budget to ICT related measures, the majority of which (some EUR 12.1 billion) is foreseen on e-services for the benefit of EU citizens and SMEs. The future Cohesion Policy (2014-2020) will continue to fund this sector in support of the Digital Agenda objectives, contributing to growth and jobs through public and private investment in fields where regions have competitive advantages.

One of the conditions to use the future ERDF is the development of research and innovation strategies for smart specialisation. The Thematic Objective 2 “Enhancing access to and use and quality of ICT Investment Priority”; “Developing ICT products and services, e-commerce and enhancing demand for ICT” and “Strengthening ICT applications for e-government, e-learning, e-inclusion and e-health” is also subject to this ex-ante conditionality.

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<sup>54</sup> COM (2012)9609/2 [http://ec.europa.eu/competition/state\\_aid/legislation/broadband\\_guidelines\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/broadband_guidelines_en.pdf)

The Commission has set up the S3 Platform<sup>55</sup> to support the regions through peer reviews and workshops to share best practices and work towards the preparation of these strategies. Up to the present, more than 105 regions and five Member States have joined the platform.

**(iii) in the context of the regulatory framework on electronic communications, adopt a recommendation on consistent non-discrimination obligations and costing methodologies in order to stimulate investment in fibre deployment,**

Consistent infrastructure access pricing is key to effective competition and investments in the EU telecoms markets. Regulatory consistency across Europe ensures that telecoms operators benefit from regulatory predictability and clarity which are necessary for, in particular, the large scale investments required to roll-out next generation networks capable of supporting the Digital Agenda for Europe's broadband targets. In practice, however, national telecoms regulators use diverging costing methodologies to set copper- and fibre-based wholesale access prices in their countries. This has resulted in divergences in access prices which do not solely stem from underlying national specificities. Unjustified divergences in costing obligations across Europe harm the consolidation of the Single Market. The Commission thus considers EU guidance for NRAs on costing methodologies for setting key copper and fibre wholesale access prices a policy priority.

The Commission services have taken a number of steps since the end of 2011. It launched public consultations on the problem definition and broad policy ideas related to costing and non-discrimination obligations for wholesale access products; carried out extensive desk research and consulted the Body of European Regulators of Electronic Communications (BEREC), individual national telecoms regulators, market players as well as investors. The Commission services have in addition, commissioned three independent studies.

On 12 July 2012, the Commission announced the outlines of a regulatory package to give a new impetus to the rolling out of high speed broadband networks. The immediate legislative output of this regulatory package will be **a Recommendation on consistent non-discrimination obligations and costing methodologies.**

**(iv) adopting a regulation on measures to reduce costs of deployment of high speed electronic communications infrastructure.**

A legislative proposal on cost reduction<sup>56</sup>, which is one of the key legislative measures in the Commission's Single Market Act II (SMA II), was adopted on 26 March 2013, in line with the European Council Conclusions of 1-2 March 2012

Its aim is to complement the current regulatory framework with legislation focused on current deployment bottlenecks such (1) as those concerning the use of existing passive infrastructure (2) those related to co-deployment, (3) inefficiencies regarding

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<sup>55</sup> <http://s3platform.jrc.ec.europa.eu/home>

<sup>56</sup> COM(2013) 147 final <http://ec.europa.eu/digital-agenda/en/news/proposal-regulation-european-parliament-and-council-measures-reduce-cost-deploying-high-speed>



the granting of administrative permit, and, (4) those concerning in-building deployment connecting customers.

High speed broadband Internet is the backbone of the digital single market. Hence the broadband targets of the Digital Agenda for Europe, which are part of the overall strategy for growth and jobs include: access to high speed broadband (30 Megabits per second or more) for all Europeans by 2020, with at least 50% of European households having high speed subscriptions above 100 Megabits per second.

The costs of Next Generation Access (NGA) deployment in Europe are estimated to amount to 200 billion euro, of which up to 80% is estimated to be linked to civil engineering costs. Studies also suggest that up to a 30% cost reduction could be achieved by re-using existing ducts, including those of alternative infrastructures owned by other utilities such as energy networks, railways and sewerage systems.

**Main Action 15: adopt an overall strategy on cloud computing in order to stimulate that sector and provide the legal certainty which economic operators need (2012).**

The Communication "Unleashing the Potential of Cloud Computing in Europe"<sup>57</sup> was adopted and published by the Commission on 27 of September 2012. The overall goal of the recently adopted EU cloud computing strategy is to make Europe cloud-active and cloud-friendly in order to stimulate the uptake of cloud-based services for the benefit of users and services providers alike.

Key actions of the strategy described in the Communication include:

- Cutting through the jungle of standards so that cloud users enjoy interoperability, data portability and reversibility. A common mapping of the necessary standards needs to be identified by 2013.
- The development of voluntary EU-wide certification schemes for trustworthy cloud services. Providers of cloud services should create certification schemes which enable users to evaluate and compare, in a simple manner, the level of conformity with standards, interoperability and data portability. Certification would also encompass the verification that the provider has implemented the appropriate IT security and data protection measures, as well as technical and organisational measures and the appropriate safeguards for data transfers.
- The development of model contract terms to cover issues not covered by the Common European Sales Law such as: data preservation after termination of the contract, data disclosure and integrity, data location and transfer, ownership of the data or direct and indirect liability. Identifying and developing consistent solutions in the area of contract terms and conditions is a way of encouraging the wide take up of cloud computing services by increasing consumer trust.

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<sup>57</sup> COM (2012)529 [http://ec.europa.eu/information\\_society/activities/cloudcomputing/docs/com/com\\_cloud.pdf](http://ec.europa.eu/information_society/activities/cloudcomputing/docs/com/com_cloud.pdf)

- Establish a European Cloud Partnership (ECP) to drive innovation and growth in the public sector. The European Cloud Partnership is an alliance driven by key IT services procurers from European public bodies in cooperation with CEOs of the IT and telecom industry.

**Main action 16: adopt a Communication on spectrum-sharing including a strategy for the promotion of shared access to the spectrum in the Single Market and allowing a structured political debate on the economic, technical and regulatory issues surrounding the various methods of spectrum-sharing (2012).**

The Radio Spectrum Policy Programme (RSPP)<sup>58</sup> was adopted on 14 March 2012. The Decision contains a number of provisions fostering the availability of spectrum for wireless broadband services, which are crucial for access to high-speed Internet services such as e-Commerce services.

As a first milestone of the RSPP implementation, the Commission adopted a Communication on the shared use of spectrum<sup>59</sup> on 3 September 2012 to ensure additional flexibility in spectrum authorisation and usage as well as to foster innovation in wireless networks and services.

The RSPP aims at a target of 1200 MHz available spectrum for wireless broadband by 2015 and imposes the obligation on Member States to make available the 800 MHz band for wireless broadband by 1 January 2013. The 800 MHz band is crucial for the economic roll-out of nation-wide wireless broadband services. The Commission services are closely monitoring the deadlines for making this spectrum available and administrative procedures will be launched where appropriate.

In order to step up its efforts to achieve the goals of the Radio Spectrum Policy Programme, in particular in the area of wireless broadband, the European Commission is developing and pursuing a targeted action plan accelerating the process for making available the necessary spectrum resources and thereby the roll-out and usage of high speed wireless communication networks and services.

#### 4. CONCLUSION

Many actions included in the action plan have been completed already, and the remaining ones are underway. While this is a very satisfactory outcome after just one year of implementation of a four year action plan, the full success of this action plan will depend on appropriate follow up and concrete initiatives undertaken in the year(s) ahead.

Further close monitoring is needed both with respect to the elements of this action plan and market developments. A stakeholder conference will be organised at the end of 2013 to take stock of progress and assess future needs.

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<sup>58</sup> Decision No 243/2012/EU of the European Council and of the European Parliament of 14 March 2012 [http://ec.europa.eu/information\\_society/policy/ecomm/radio\\_spectrum/rspp/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecomm/radio_spectrum/rspp/index_en.htm)

<sup>59</sup> COM(2012) 478 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0478:FIN:EN:PDF>