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A coherent framework for building trust in the Digital Single Market for e-
commerce and online services

Delegations will find attached Commission document COM(2011) 942 final.

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**COMMISSION COMMUNICATION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

**A coherent framework for building trust in the digital single market for e-commerce
and online services**

{SEC(2011) 1640 final}
{SEC(2011) 1641 final}

INTRODUCTION

The Internet has revolutionised the everyday lives of Europeans in a way comparable to the industrial revolutions of the previous centuries. Electronic commerce and online services in the broader sense¹ are now at the heart of the lives of consumers, businesses (from the largest to the smallest) and citizens in general. The way they compare, purchase and sell goods and services, the way they search for information or make it available, the way they manage their payments or their data, the way they learn and train, the way they interact, exchange and share is not the same as it was five, let alone ten or twenty, years ago.

Traditional economic activities, and the administrative rules governing them, face the challenge of adapting to developments that blur the dividing lines, for example, between shop and online sales or between traditional media and Internet communication. Convergence of this type can lead to virtuous circles of competition and innovation which benefit everyone. It may also require the review of certain rules whose relevance or effectiveness may be undermined by technological developments, or call for new accompanying policies.

A genuine Digital Single Market would generate new types of growth. The hitherto unrealised potential is enormous and would benefit all the territories and economic sectors of the European Union. In the G8 countries, South Korea and Sweden, the internet economy² has brought about 21% of the growth in GDP in the last five years³. It also generates 2.6 jobs for every job cut and at times accounts for 25% of net employment creation⁴. Online services are by nature cross-border and can speed up European integration and the creation of the Single Market which has been sought for more than 50 years.

Nevertheless, the share of the internet economy in European GDP remains small. It was no more than 3% in 2010. Although the growth rate of e-commerce⁵ at national level is high, this new vector remains marginal at only 3.4%⁶ of European retail

¹ The term “online services” refers to services provided at a distance, electronically, at the request of the person who is the recipient of the services, in return for payment. It therefore covers not only e-commerce in goods (including cultural goods and pharmaceutical products) and services (including online gambling) but also social networks, vocational training by distance learning, etc. However, online services provided by public administrative bodies are not included in this analysis. For the sake of simplicity, the term “online services” will be used unless e-commerce is being referred to explicitly.

² All activities linked to the creation and use of internet access networks as well as the services offered on the internet (IP telecommunications, manufacture and maintenance of IT material intended for the Web, Internet-based service activities, and all activities using the internet as a medium, from e-commerce to online advertising).

³ “Internet matters, the net’s sweeping impact on growth, jobs, and prosperity”, McKinsey Global Institute, May 2011, which looks at these countries and at Brazil, China and India.

⁴ This has applied to France since 2000. “The impact of the Internet on the French Economy”, McKinsey. March 2011

⁵ Sales and purchases made via internet sites or electronic systems, excluding the sending of orders which have been typed manually (Eurostat and OECD definition).

⁶ Euromonitor

trade. It is less advanced than in the United States or Asia-Pacific and tends not to go beyond national borders; cross-border activity remains low⁷.

“Internet Europe” is still a patchwork of different laws, rules, standards and practices, often with little or no interoperability. This hinders the development of online services and undermines the confidence of existing or future users on both the supply and the demand side. Lack of knowledge of the rights conferred, the applicable rules and the opportunities that the digital economy offers reinforces their reluctance. The practical difficulties related to cross-border transactions (payments, deliveries, dispute resolution, risk of abuse) discourage people from taking full advantage of the internet to purchase or supply their goods and services.

The Digital Single Market is far from achieving its full potential; the cost of the failure to complete it is expected to be at least 4.1% of GDP between now and 2020, i.e. EUR 500 billion or EUR 1000 per citizen⁸. The European Union cannot just resign itself to bearing the costs of a fragmented digital market after having set ambitious objectives for renewed, sustainable, smart and inclusive growth by 2020⁹. Instead it must set objectives that match the growth potential of online commerce and services, which could reach 15 to 20% of GDP growth by 2015 in the Netherlands and the United Kingdom, for example¹⁰. Setting the objective of doubling online sales and the share of the internet economy in European Union GDP by 2015 bears witness to its determination to make the most of the digital economy.

Boosting online commerce and services at European level requires firm and concerted action in line with the Digital Agenda for Europe¹¹. The Commission is committed to working with all the stakeholders in order to achieve this objective. Many of the initiatives announced in the digital strategy have already been or are about to be adopted¹². This Communication also follows on from that of 2009¹³, whose analyses are still valid. It constitutes a new contribution to the implementation of the digital agenda, since it establishes an action plan for the development of online services and, through the Annual Growth Survey¹⁴, offers a response to the request from the European Council to submit a roadmap to achieve an internal digital market by 2015.

⁷ 5th Consumer Scoreboard, Internal Market, European Commission, March 2011, http://ec.europa.eu/consumers/consumer_research/editions/cms6_en.htm

⁸ Copenhagen Economics, The Economic Impact of a European Digital Single Market, March 2010

⁹ Communication from the Commission "Europe 2020: A strategy for smart, sustainable and inclusive growth", COM(2010) 2020 final.

¹⁰ “Turning local: from Madrid to Moscow, the Internet is going native”, Boston Consulting Group, September 2011

¹¹ Commission Communication ‘A Digital Agenda for Europe’ COM(2010) 245

¹² For example, the proposals for a regulation on a European common sales law, a directive on alternative dispute resolution or the revision of the directive on the re-use of public sector information. See the Annual Progress Report of 22 December 2011. http://ec.europa.eu/information_society/digital-agenda/documents/dae_annual_report_2011.pdf.

¹³ COM(2009) 557 final.

¹⁴ COM(2011) 815 final.

BUILDING TRUST IN THE DIGITAL SINGLE MARKET

Expected benefits

High-performance and innovative online services based on the high-speed communication networks they need have a unique capacity to stimulate growth and employment in Europe. No other technological, economic or social change currently offers the same level of potential in terms of increased efficiency, access to a wide range of choices, accessibility, practicality and innovation. Online services and high-speed communication networks can also contribute to greater productivity and innovation in education and lifelong learning and provide better ways to meet major societal challenges such as social and territorial cohesion or adapting to an ageing population and climate change.

Reaching this potential will require increased trust in the Digital Single Market which will benefit all of society:

- More e-commerce will generate tangible benefits for **consumers** such as lower prices, more choice and better quality of goods and services, thanks to cross-border trade and easier comparison of offers¹⁵. The overall gain for consumers would be around EUR 204 billion (1.7% of European GDP) if e-commerce reached 15% of retail sales and if the obstacles to the Single Market were removed¹⁶. Vulnerable people (the elderly, those with reduced mobility, those isolated in rural areas, those with low purchasing power) will particularly benefit and Europe will thus be better placed to meet the demographic challenges of today.
- **Businesses, in particular SMEs** and micro-companies, will have more opportunities. They will have access to new markets beyond national and even European borders. More intensive use of online services and access to cloud computing will improve the productivity of companies. A lot more businesses will be starting up and existing companies will flourish by finding new market niches thanks to the “long tail” effect¹⁷. A high-performance digital European market will make Europe better able to compete with the rest of the world by giving it a competitive edge which is based on knowledge, a highly qualified workforce and innovative economic and social models.
- More generally, **citizens** will be able to go online, including to carry out cross-border activities, in a secure, responsible and trustworthy environment. In Europe, the internet will provide a more efficient, more secure and more responsible framework for activities, allowing everyone to exercise their rights. It will reflect European values and respect the fundamental rights set out in the Charter of Fundamental Rights of the European Union, such as the freedom of

¹⁵ It is estimated that consumers who shop online on the domestic market have twice as much choice as those who do not shop online at all. If they shop online throughout the European Union they have 16 times more choice.

¹⁶ Commission Staff Working Paper, "Bringing e-commerce benefits to consumers", Annex 2 to this Communication.

¹⁷ The total sales of products for which demand is low or whose sales volume is low can equal or exceed the market shares of best-selling products if sellers can offer a wider choice.

expression and information, the right to privacy, personal data protection and non-discrimination. Cultural and social exchanges will be facilitated.

- **Workers** will also benefit from the Digital Single Market. Online services will create high-quality jobs, whether as employees or on a self-employed basis, even in rural or isolated areas. They will offer a wider range of work arrangements (for example teleworking), facilitate job-hunting even outside the country, and encourage private initiative.
- Lastly, the development of e-commerce will benefit the **environment**. Growth generated in this way will be greener and more sustainable; home delivery as part of optimised logistics uses less energy than multiple individual trips by consumers¹⁸. More energy savings will be made in the actual manufacturing of goods which can now be downloaded as digital content¹⁹.

A strategy for reaching this objective by 2015

This Communication identifies five main obstacles to the Digital Single Market and proposes an action plan to remove them:

- the supply of legal, cross-border online services is still inadequate;
- there is not enough information for online service operators or protection for internet users;
- payment and delivery systems are still inadequate;
- there are too many cases of abuse and disputes that are difficult to settle;
- insufficient use is made of high-speed communication networks and hi-tech solutions.

These five obstacles and the solutions proposed in the action plan are not an exhaustive list. The plan places emphasis on strengthening a single harmonised framework for e-commerce and other commercial online services. It opens a new chapter on this subject in the digital approach for Europe, continuing the logic, of the Single Market Act²⁰, and is part of a wider commitment from the European Union aimed at boosting the economy and the information society, ranging from promoting online administration and digital literacy to standardisation and online security²¹.

The conclusions of this Communication are drawn from many consultations, from studies and reports such as those from the European Parliament, and from a public consultation. It is accompanied by two staff working documents. The first, entitled “Online services, including e-commerce, in the Single Market”, analyses the

¹⁸ *L’impact environnemental de l’achat sur internet* [The environmental impact of online buying], Estia and Médiamétrie//NetRatings for FEVAD [Federation for e-commerce and distance selling], June 2009.

¹⁹ Weber, Koomey, Matthews: "The energy and climate change impact of different music delivery methods", final report to Microsoft Corporation and Intel Corporation.

²⁰ Commission Communication “Single Market Act - Twelve levers to boost growth and strengthen confidence; Working together to create new growth”, COM(2011) 206 final.

²¹ The Commission will ensure that any action taken in the context of this Communication is in line with the Charter of Fundamental Rights of the European Union.

obstacles to developing e-commerce in conjunction with the assessment of the Directive on Electronic Commerce²². The second, entitled “bringing e-commerce benefits to consumers”, presents a detailed analysis of the obstacles that are more specific to e-commerce in goods.

– **FIVE PRIORITIES**

Develop the legal and cross-border offer of online products and services

In order to benefit fully from a Single Market for online services, consumers in all Member States must have legal access to a wide range of products and services, offered over the largest possible geographical area.

The **Directive on Electronic Commerce** removed a series of obstacles to cross-border online services. It is **crucial to legal certainty and confidence for both consumers and businesses**. Its internal market clause, which states that the Member States may not restrict the freedom to provide information-society services from another Member State, is the cornerstone of the Digital Single Market. The consultations and analyses carried out indicate that a revision of the Directive is not required at this stage. It is, however, necessary to improve the implementation of the Directive (in particular through better administrative cooperation with the Member States and an in-depth evaluation of the implementation of the Directive), provide clarification, for example concerning the liability of intermediary internet providers, and take the additional measures needed to achieve the Directive's full potential, as identified in the current action plan. Recourse to the IMI system²³, already in place for other European legislative instruments, could facilitate administrative cooperation between Member States when it comes to enforcing the e-commerce Directive.

Furthermore, a number of obstacles are still impeding the development of online services and access to them for as many people as possible:

Businesses are reluctant to commit to these innovative activities in view of the **costs and risks arising from fragmentation caused by the coexistence of 27 national legal systems**, particularly as regards consumer law. Extra effort at European level is needed to free up initiative without creating new barriers. The recently proposed regulation on a Common European Sales Law, to be applied on a voluntary basis subject to the express agreement of the parties to a cross-border contract, will reduce the cross-border transaction costs for businesses. This Common European Sales Law will coexist with national legislation. On the other hand, in the interests of customers, **unjustified discrimination based on nationality or the place of residence at the time of purchase** must be stopped. The Commission will to that end present

²² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce. OJ L 178/1, 17.7.2000. Its purpose is to encourage the development of these services, in particular by applying the provisions regarding the country of origin, the obligations to inform the consumer, regulation of commercial communications online and the provisions on electronic contracts and liability of intermediary internet service providers.

²³ This is a multilingual secure online application which facilitates communication between competent authorities in the European Economic Area.

guidelines on the implementation of Article 20 of the Services Directive, which explicitly prohibits such discrimination²⁴.

Heightened competition between goods and services must also be encouraged. SMEs have expressed concerns over cases where **selective distribution** has been wrongly applied to products. The Commission will ensure that the rules on selective distribution²⁵ are rigorously applied. As part of a future initiative on unfair business-to-business commercial practices, the Commission will also examine the problems caused by stakeholders in traditional trade who misuse their bargaining power in a bid to obstruct the activity of new online operators. Lastly, it will make sure that businesses do not abuse their dominant position in the digital environment and that net neutrality is preserved. Special emphasis will be laid on allowing end users to access and disseminate information and to use applications and services of their choice²⁶.

In the field of digital content, **legal offers** evolve at different rates in the Member States and do not always meet consumers' expectations. In the case of music, for example, the residents of some Member States benefit from a much wider choice than those in other EU countries. Overall, the online consumption of music has developed faster in the US than in Europe²⁷, where transnational or pan-European offers remain limited. The same can be said of the audiovisual sector, since the distribution networks for audiovisual content and broadcasting rights are still limited in some Member States and are often national in scope. It should be possible for the collective management of copyright to become more European in structure, thereby facilitating the issue of licences covering a number of regions. European citizens who have moved temporarily or permanently to another Member State should be able to continue to watch their favourite programmes. Ambitious implementation of the European Strategy for Intellectual Property Rights²⁸ will foster the development of a richer and more appropriate offer on a European scale. In 2012, the Commission will submit proposals to create a legal framework for the collective management of copyright, with a view to enabling multi-territory and pan-European licensing.

Other new offers made possible by technological developments, such as **digital books**, which have overtaken paperbacks in the US, are still in their infancy in Europe. The applicable rate of VAT on digital publications, for example, can adversely affect the supply trend, since it is much higher than the rate for equivalent physical products, and this is reflected in the consumer sales price. In the Communication on the future of VAT adopted on 6 December 2011²⁹, the Commission indicates that one of the basic principles to be respected is that similar goods and services should be subject to the same VAT rate and that progress in

²⁴ Directive 2006/123/EC of the Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006.

²⁵ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices [Official Journal L 102/1 of 23 April 2010].

²⁶ COM(2011) 222 final.

²⁷ Digital music sales represent 19% of total music sales in Europe, compared to 50% in the US and 25% in Japan (IFPI Recording Industry in Numbers, 2011).

²⁸ Communication from the Commission "A Single Market for Intellectual Property Rights - Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe", COM(2011) 287 final.

²⁹ COM(2011) 851 final.

technology should be taken into account in this respect, so that the challenge of convergence between the online and the physical environment is addressed. The Commission will table proposals along these lines by the end of 2013. It will also engage in more general discussions with Member States and stakeholders on the trend towards digital books in the Single Market and on obstacles to such development.

The complexity of the **VAT system** can also dissuade businesses from selling online in another Member State³⁰. Overall, simplifying the administrative burden on businesses under the current VAT system, and in particular setting up one-stop shops, would encourage and facilitate cross-border e-commerce. The Commission states in the above-mentioned Communication that one of its top priorities is the harmonious introduction of a mini one-stop shop in 2015 for suppliers of telecommunications, broadcasting television and electronic services provided to final consumers and that it is relying on the Member States to make the necessary resources available. It also plans to broaden the scope of the one-stop shop to include other goods and services after 2015. The smooth functioning of the internal market also depends on the reconciliation of private copying levies with the principle of the free movement of goods, i.e. allowing free cross-border trade in goods subject to private copying levies.

Social, economic, geographical, meteorological or tourist **information provided by the public sector** is used increasingly to develop innovative online commercial applications. However, differences in national legislation still exist, for example regarding the price or conditions for using such information. The Commission recently adopted a proposal for the review of the current legal framework in order to stimulate the use of public information for applications in the digital environment.

MAIN ACTIONS

The Commission will:

1. ensure that the Electronic Commerce Directive and the Directives protecting online consumers are correctly applied by 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);
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 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" ruling³¹;

³⁰ For example, for services, businesses must be aware of the national thresholds beyond which they must register in the Member State of sale, and then face the resulting administrative burden.

³¹ Judgment of 4 October 2001, Joined Cases C-403/08 and C-429/08. The Court ruled that the import, sale and cross-border use of subscriptions to satellite television services cannot be prohibited pursuant to the principle of the free movement of services.

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.

Improve operator information and consumer protection

Both providers and users of online services must be able to access or receive sufficiently complete and reliable information on their activities. In particular, consumers must have their rights protected and be assured that their personal data will be used appropriately.

Operators do not have enough knowledge of, and information on, the rules governing e-commerce, nor are consumers sufficiently informed of their rights, particularly in a cross-border context³². Many businesses think that it is too complicated or too risky to sell online or expand their field of activity to cross-border sales. The Commission will encourage a more active policy by using existing networks, in particular the Enterprise Europe Network, to supply online dealers with information on their obligations in the context of cross-border sales and on the opportunities offered by sale in EU countries. This action for traders will be taken in tandem with the publication of a guide on the rights of European consumers online. At the same time, the Commission will develop an interactive online platform for consumer education, including content on new digital technologies.

Half of all Europeans using the internet do so to search for information, e.g. to compare price, quality, environmental or energy performance etc., before buying on or off line³³. It is therefore important that **comparison sites** satisfy criteria on reliability, independence and transparency. At present, such criteria are not always met. Furthermore, such sites should offer citizens a wider choice through multilingual, cross-border information, thereby stimulating domestic competition and helping to build the Single Market. Confidence logos are another way to improve consumer information.

European citizens regularly complain that they have no direct means of communicating quickly and efficiently with an online service provider such as an airline company. As confirmed by a "mystery client"³⁴ study, you need only browse the internet for a short while to see that compliance with transparency and consumer information requirements is insufficient in relation to the placing of orders³⁵. Since 2007, the **Consumer Protection Cooperation (CPC) network** has been an effective instrument for guaranteeing that online traders apply the European rules on transparency and unfair commercial practices. Tools have been developed, such as "sweep" tests, which have made it possible to reduce illegal practices in the sale of airline tickets, ringtones for mobile telephones, electronic products, etc. The Commission will continue to offer its assistance in boosting the capacities of the

³² For example, only 29% of traders know where to look for information or advice on the consumer protection legislation in force in other European countries. 72% of distance sellers do not know the exact length of the withdrawal period for distance sales in their own country. Source: Flash Eurobarometer 300, retailers' attitudes towards cross-border trade and consumer protection, 2011.

³³ Consumer market study on the functioning of e-commerce and internet market and selling techniques in the retail of goods, CIVIC consulting, 2011.

³⁴ Cross-border online shopping: how safe and easy is it? ECC-Net, October 2011.

³⁵ For example, explicit acceptance of the general sales conditions, order confirmation both on screen and by e-mail, etc.

CPC network (for example, by encouraging skills development for the researchers working on it, training and the exchange of good practices).

The recently adopted **Directive on Consumer Rights**³⁶ is now the main consumer protection instrument for online services. It will have to be implemented quickly and efficiently. In 2012 the European Commission will present a European Consumer Agenda based on an integrated approach and with the impact of the digital revolution on consumer behaviour as one of its cornerstones³⁷. One of the key objectives of this Strategy will be to strengthen consumer confidence in purchasing products and services, both on and off line. In particular, it will focus on the digital content sector in order to improve consumer protection in relation to such purchases.

Furthermore, citizens need guarantees that their **personal data** will not be used without their consent, and operators must be able to develop innovative economic models. The development of new online services such as behavioural advertising generates fears about the use and standard of protection of personal data. People affected by any processing of their personal data must be given clear, comprehensible information in accordance with the Directive on data protection³⁸. Revising the data protection *acquis* will allow a good balance to be achieved between encouraging innovation and setting a high level of user protection.

In 2012, the European Commission will also propose legislation on the mutual recognition of electronic identification and authentication and on electronic signatures, which play a vital role in facilitating electronic transactions and in strengthening citizens' trust in them.

Online gambling and betting also present considerable challenges³⁹. The rapid internet uptake and the increased provision of such services make it difficult for diverging national regimes to coexist. What is more, the market for illegal gambling is still burgeoning⁴⁰. Compliance with national rules is a real challenge which raises the question of possible action at European level to guarantee adequate protection and ensure more effective measures against fraud. Today, no Member State can successfully combat illegal online gambling alone. However, cooperation between national regulators is still in its infancy. The Commission will propose an action plan in 2012 aimed among other things at strengthening cooperation and effectively protecting consumers and citizens.

³⁶ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights OJ L 304, 22.11.2011.

³⁷ European Consumer Agenda, action 17, Annex to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Commission Work Programme for 2012. COM(2011) 777 final/2.

³⁸ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. OJ L 281, 23.11.1995.

³⁹ Green Paper on on-line gambling in the Internal Market, COM(2011) 128 final.

⁴⁰ Out of almost 15 000 gambling sites operating in Europe a few years ago, more than 85% did not have a licence. Source: *Cybercriminalité dans le jeu en ligne* (Cybercrime in online gambling), White Paper by CERT-LEXSI, (IT security survey laboratory), July 2006.

Online purchases of medicinal products give rise to a certain number of problems in relation to consumer protection. A Directive on falsified medicines⁴¹ has recently been adopted and will contribute to the safety of legal online offers, in particular by introducing a European confidence logo for legal sites in the context of the more general reflections on confidence logos for online shops announced in the digital agenda.

With a view to guaranteeing sufficient protection for patients throughout the EU, any specific risks linked to the online sale of medicinal products should continue to be analysed in the context and against the background of the implementation of the Directive by the Member States. Furthermore, the report to be submitted by the Commission to the European Parliament and to the Council on the Directive's contribution to preventing the entry into the legal supply chain of falsified medicinal products will include information on developments in the falsification of medicinal products as regards the categories of medicinal products concerned and channels of distribution, including online sales.

Furthermore, the illegal offer of medicinal products can constitute a criminal activity for which the Medicrime Convention⁴² of the Council of Europe provides an international framework for legal action. The Council conclusions of June 2011⁴³ call on the Member States to strengthen law enforcement cooperation in the fight against falsified medicinal products, and set out plans to detect websites showing potentially illegal offers of medicinal products.

MAIN ACTIONS

The Commission will:

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);
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);
6. boost the capacity of the CPC 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);

⁴¹ Directive 2011/62/EU of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products. OJ L 174 of 1.7.2011.

⁴² Convention of 28 October 2011 on the counterfeiting of medical products and similar crimes involving threats to public health.

⁴³ JHA Council of 9 and 10 June 2011.

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);
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);
9. through 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 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.

Reliable and efficient payment and delivery systems

Unlike traditional trade, which involves face-to-face payment, e-commerce is largely based on **distance electronic payments**. Online consumers must therefore be able to choose between various methods of guaranteeing fast, secure payment at competitive prices. Too often, however, a lack of confidence and a limited choice of payment method prevent or discourage consumers from paying online and therefore from fully benefiting from e-commerce⁴⁴.

Almost 35% of internet users do not buy online because they have doubts concerning security of payment⁴⁵. Debit cards are not widely enough accepted for online payments, and not all European citizens have credit cards. Additional charges, sometimes high, may also put consumers off. Furthermore, businesses consider the cost of payment to be excessive, in particular for micro-payments, which are expected to undergo rapid development (press, music, online films, etc). This situation is caused by a number of obstacles and inadequacies which block the development of the online payment market in Europe, especially in cross-border trade⁴⁶. These include, but are not limited to, high market fragmentation, barriers to market entry, insufficient standardisation, interoperability problems between service providers, inadequate payment security and personal data protection, a pricing system which is not free and insufficient transparency for certain payment instruments.

All these issues need to be resolved in the interests of better market integration. The Single Euro Payments Area (SEPA), with its Europe-wide transfers and debits, is the foundation on which to develop new pan-European payment services respecting the

⁴⁴ The above-mentioned digital strategy for Europe identifies a secure payment system, confidence, respect for the right to privacy and insufficient access as the main concerns for consumers wishing to make online purchases.

⁴⁵ Eurostat Household Survey 2009.

⁴⁶ Internet payments are often made by debit or credit card, electronic payment solutions or telephone (m-payments).

right to data protection⁴⁷ and confidential communications. Consumers and traders would benefit directly from a more integrated single space encompassing payment cards, internet payments and mobile payments. Even though the market is moving in this direction, the pace of progress is generally too slow and is not felt throughout the European Union.

As regards the **delivery of online purchases**, consumers must trust that they will receive their order easily and at a reasonable cost, without excessive delay and in satisfactory condition.

Yet 10% of people currently do not buy online⁴⁸ because they are concerned about the cost of delivery services, in particular cross-border delivery, and about service quality. The quality of a package delivery service cannot be measured with delivery time as the only indicator. Security is an important parameter which must also be taken into account. The choice between various options for the consumer must be developed, and the best European practices, such as home delivery at specific times, collection in a partner shop or in automated systems with long opening hours, etc., must be disseminated and used in the various Member States. From the viewpoint of both customers and businesses, the issue of liability for damaged, stolen or lost packages should be clarified. Care must also be taken to ensure that the delivery services are also efficient and affordable in rural or remote areas and in the outermost regions of the EU, so that e-commerce lessens rather than accentuates inequalities in terms of territorial cohesion.

MAIN ACTIONS

The Commission will:

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 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;
11. 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.

Combating abuse and resolving disputes more effectively

Online services must continue to offer European consumers this exceptional opportunity to communicate and conduct economic activities more easily, in

⁴⁷ Principle of privacy by design.

⁴⁸ Eurostat Household Survey 2009.

accordance with the law. Social networks and platforms for online sales or video-sharing now play a key role in European society and business. They allow citizens to be more active, give their opinions on goods or services, gain information and express themselves. But the legal boundaries are sometimes overstepped: worse, this occurs in sensitive fields such as child pornography, violence in general, incitement to racial hatred, libel, terrorism or illegal online gambling and the criminal practices which may be associated with it. Infringements of intellectual property are also a source of concern.

Despite the guarantees offered by the Directive on electronic commerce to businesses which host or passively transmit illegal content, intermediary internet service providers struggle with the legal uncertainty linked to fragmentation within the European Union of the applicable rules and practices which are possible, required or expected of them when they are aware of illegal content on their websites. Such fragmentation discourages those who wish to conduct business online, and hinders its development.

Furthermore, the internet is used as a means of disseminating products and services which are counterfeit or pirated or violate intellectual property rights. Intellectual property rights must be defended in knowledge-based economies, and the European Union is fighting actively against counterfeiting and piracy.

In general it is still too rare for illegal activities to be effectively stopped and for illegal content to be removed or removed promptly enough. For instance, citizens are annoyed that it sometimes takes too long even to remove obviously criminal content such as child pornography, the presence of which on the internet is a very serious matter. This undermines the confidence of citizens and businesses in the internet, which in turn affects online services such as sales platforms. In parallel to this, citizens sometimes complain about the lack of transparency or about initiatives that are incorrect (such as the taking down of legal content) or disproportionate or which disregard the right of certain online service providers to be heard.

The mechanisms to stop abuse and illegal information must therefore be made more efficient, within a framework which guarantees legal certainty, the proportionality of the rules governing businesses and respect for fundamental rights. In the Annex, the European Commission describes in detail the differing interpretations which are at the root of the above-mentioned problems. In view of the growing volume of statutory and case-law in the Member States, it now appears necessary to set up a horizontal European framework for notice and action procedures⁴⁹.

⁴⁹ The notice and action procedures are those followed by the intermediary internet providers for the purpose of combating illegal content upon receipt of notification. The intermediary may, for example, take down illegal content, block it, or request that it be voluntarily taken down by the persons who posted it online. This initiative should encourage rather than undermine more detailed initiatives in certain fields. For instance, the European Protocol signed in May 2011 between major rights-holders and internet platforms on the online sale of counterfeit products requires, in addition to a notification and take-down procedure, action against repeat infringements as well as proactive and preventive measures.
Cf http://ec.europa.eu/internal_market/ipenforcement/docs/memorandum_04052011_en.pdf

In parallel to this, the Commission will revise the Directive on the enforcement of intellectual property rights⁵⁰ in 2012 in order to combat illegal content more effectively and in a manner which upholds the internal market and fundamental rights by improving the framework for civil law proceedings. The creation of the European notice and action framework will be without prejudice to this initiative. Cooperation between stakeholders, in particular internet providers, rights-holders and payment services, in the European Union and the US, may also help to combat illegal content.

Moreover, unfair commercial practices, in particular the use of questionable or prohibited commercial communications, need to be tackled.

In addition, if a problem arises in relation to an online purchase, consumers must be able to find a rapid, easy solution. Uncertainties about what to do in the event of a problem remain a fundamental obstacle to consumer trust in online services. Law courts do not yet offer a satisfactory solution for the settlement of disputes arising from online commercial transactions, since the traditional legal dispute-settlement mechanisms are too lengthy and expensive⁵¹. It is therefore necessary to strengthen the effectiveness of law enforcement in general and, in particular, facilitate the **settlement of online disputes**. Alternative dispute-settlement systems⁵² are a faster and less onerous means of ensuring the optimal development of online services. However, they are not yet readily available online, are either little known or unknown, and do not cover all sectors. In order to remedy this situation, and pursuant to the Single Market Act, the Commission has proposed a Directive on alternative dispute resolution for consumer disputes and a Regulation on online out-of-court dispute resolution for consumer disputes⁵³. The European Parliament and the Council will be encouraged to adopt these proposals without delay⁵⁴. Furthermore, the Commission will soon adopt a legislative initiative on the settlement of business-to-business disputes⁵⁵.

Lastly, strengthening security is essential to confidence in the Digital Single Market. In a digital world that is interconnected and interdependent, cyber attacks and technical failures can very quickly affect infrastructure and have a considerable impact on the European economy and society and on citizens themselves. An effective and targeted EU-wide policy must therefore be put into practice. The Commission will therefore submit a European Strategy for Internet Security in 2012. Its main objectives will be to ensure that the internet security mechanisms in place are able to cope effectively with cyber attacks and technical failures; to regularly test

⁵⁰ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights. OJ L 195, 2.6.2004.

⁵¹ This is despite the existence of a European Small Claims Procedure, cf. Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199/1 of 31.7.2007.

⁵² Known as Alternative dispute resolution (ADR)/On line dispute resolution (ODR).

⁵³ Proposal for a Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) COM(2011) 793 and Proposal for a Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR), COM(2011) 794.

⁵⁴ The ADR-ODR proposals are part of the 12 key actions identified by the Single Market Act, which the European Parliament and the Council have already agreed to fast track (2012 Annual Growth Survey, COM (2011) 815 final).

⁵⁵ Proposal on the online settlement of business-to-business disputes planned for 2012.

their ability to react; to exchange information; to plan operating procedures in advance; and to ensure that mechanisms for notifying the competent authorities are put in place.

MAIN ACTIONS

The Commission will:

12. adopt a horizontal initiative on notice and action procedures (2012)⁵⁶;
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.

Deploy high-speed networks and advanced technological solutions

The deployment of high-speed communication networks is a *sine qua non* for the development of online services. However, compared with its competitors, the EU, which set itself ambitious objectives in the digital agenda⁵⁷, is lagging behind in terms of investment in the new generation telecommunications infrastructure which it urgently needs.

The Member States must place **investments in high speed internet** at the core of their growth strategy⁵⁸, in particular by putting into practice the operational plans in this field, rapidly transposing into national law the revised European regulatory framework for electronic communications, adapting town planning law to limit deployment costs, using the regional policy funds available or the instruments envisaged in the Connecting Europe Facility proposed by the Commission (for example debenture loans)⁵⁹. The Commission will encourage the Member States to promote the digital economy and society, and to ensure the integration of the rural, remote and outermost areas in electronic communication networks.

Furthermore, the emergence of new means of online consumption, such as the use of mobile internet (e.g. smartphones and tablets) calls for **increased radio spectrum availability**. European growth ambitions must be translated into appropriate action. In particular, following on from the recently concluded policy agreement, the draft Decision of the European Parliament and of the Council establishing the first radio spectrum policy programme⁶⁰ must be implemented soon after its adoption by the European legislator. Indeed, it is particularly important to guarantee citizens and businesses better wireless broadband connections through the more efficient use of the spectrum, and particularly through spectrum-sharing.

In addition to infrastructure challenges, the European Union must meet those created by advanced technologies. **Cloud computing** offers particularly high potential in

⁵⁶ A prior impact assessment will determine the type of initiative.

⁵⁷ Access to connection speeds of over 30 Mbps for all Europeans and at least 50% of households with a connection speed of over 100Mbps in 2020.

⁵⁸ As for all the initiatives mentioned in this Communication, without prejudice to the rules on State aid.

⁵⁹ Proposal for a Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility of 19 October 2011 COM(2011) 665 final.

⁶⁰ COM/2010/0471 final.

terms of jobs, productivity (above all for SMEs), and savings for all sectors. In 2012, the Commission will adopt a global European strategy on cloud computing which will cover the legal, technical and standardisation dimensions, and will include measures to encourage research and innovation.

MAIN ACTIONS

The Commission will:

14. strengthen and facilitate the development of information and communication structures in 2012 by (i) in the context of the Connecting Europe Facility, preparing guidelines for the preparation of broadband infrastructure projects; (ii) in the context of the European Cohesion Fund, drafting guidelines for smart specialisation strategies which must be implemented in order to benefit from regional funding, (iii) in the context of the regulatory framework on electronic communications, adopting a recommendation on access-pricing schemes in the wholesale market in order to stimulate investment in fibre deployment, and adopting a review of the 2009 guidelines on State aid for high-speed networks⁶¹, and (iv) adopting a guide on techniques to reduce construction costs with the aim of reducing them by half;
15. adopt an overall strategy on cloud computing in order to stimulate that sector and provide the legal certainty which economic operators need (2012);
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).

CONCLUSION

The development of e-commerce and online services in recent decades has been to the great advantage of European citizens and consumers. They have exceptional economic and social potential which is still far from being achieved.

A solid European strategy must accompany and accelerate the completion of the digital society and economy, thereby meeting citizens' expectations and generating new growth, with the aim of doubling the shares of the internet economy in European GDP and of online sales in European retail by 2015. In addition to monitoring the measures proposed here to achieve these goals, care must be taken to ensure the consistency and convergence of initiatives. In particular, there must be careful reflection prior to any new proposal in order to ensure that new measures taken at European level do not create further obstacles to the development of online services.

In view of the global dimension of e-commerce and of online services, action within the European Union must go hand in hand with more active participation in the work of existing international bodies and sufficient coordination, to ensure that European

⁶¹ Community Guidelines for the application State aid rule in relation to rapid deployment of broadband networks. OJ C 235, 30.9.2009.

businesses operating outside the European Union and businesses from third countries established in the EU will not face difficulties caused by legislative fragmentation.

The European Commission will follow developments in online services closely and will report on the progress achieved with the implementation of this action plan by publishing annual reports and reports on the implementation of the Directive on electronic commerce, and in coordination with the monitoring of the Single Market Act and the Digital Agenda for Europe. It will organise a stakeholder conference in 2013. On the occasion of the mid-term review of the digital agenda, the Commission will also assess the progress achieved on the actions set out in this strategy and, where appropriate, will consider new actions to further stimulate the digital society and the digital economy.