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

**A comprehensive approach to stimulating cross-border e-Commerce for Europe's
citizens and businesses**

{SWD(2016) 163 final}

1 Context

This Communication presents a broad and comprehensive package of e-commerce measures through which the Commission is aiming to achieve the rapid removal of barriers to cross-border online activity in Europe. This is a pre-requisite for the full functioning of the Digital Single Market and will help to ensure consumers and businesses get better value and increased choice of online goods and services while providing businesses, particularly start-ups, with new opportunities to scale up across Europe. This package of measures is in line with the call of the European Council¹ for actions to remove the remaining barriers to the free circulation of goods and services sold online and to tackle unjustified discrimination on the grounds of geographic location and with the European Parliament's call² for the Commission to dismantle barriers affecting e-commerce in order to build a genuine cross-border e-commerce market in Europe.

E-commerce as a driver for growth

The value of retail e-commerce in the EU grew by 13.7% in 2014 compared with 2013 and reached a total of around €370bn³. The average annual growth rate in the period 2000-2014 was 22%⁴. The turnover from e-commerce as a share of total turnover in the retail sector reached 8% in 2015⁵, showing that the dynamism of this form of trade and its contribution to the EU economic growth has to be sustained.

In its Strategy for a Digital Single Market (DSM)⁶ the Commission identified a number of areas where immediate action was required to break down barriers to cross-border online activity and to define an appropriate e-commerce framework. Preventing unjustified different treatment of consumers and businesses when they try to buy goods and services online within the EU is one of the key measures. Such discrimination can come in the form of nationality, residence or geographical location restrictions which run counter to the basic principles of the EU. Similarly in its Single Market Strategy⁷, as part of its broader efforts for a fairer Single Market, the Commission announced its intention to fight all forms of unjustified differentiated treatment of purchasers based in different Member States, irrespective of whether they are applied in direct sales or via distribution channels and regardless of how they take place.

Preventing discrimination is not the only solution to removing barriers to cross-border e-commerce. That is why the DSM Strategy also highlighted the need to build consumer trust in cross-border online sales, by ensuring better enforcement of existing rules and the availability of affordable and high quality cross-border parcel delivery services. The Strategy also highlighted the need to reduce transaction costs and other burdens caused by differences in contract law between Member States and to reduce VAT related administrative burden. The Commission's evidence gathering exercises⁸ confirmed these as the main issues to be tackled.

¹ <http://www.consilium.europa.eu/en/press/press-releases/2015/06/26-euco-conclusions/>

² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0009+0+DOC+XML+V0/EN>

³ All figures from: European B2C E-commerce Report 2015. E-commerce Europe excluding Bulgaria, Cyprus, Croatia, Lithuania, Luxembourg, Malta, Slovenia and Slovakia for which data are not available. <http://www.ecommerce-europe.eu> p.29.

⁴ Duch-Brown, N. and B. Martens (2015), The European Digital Single Market: Its Role in Economic Activity in the EU. JRC/IPTS Digital Economy Working Paper 2015/17. Available at: <https://ec.europa.eu/jrc/sites/default/files/JRC98723.pdf>

⁵ Eurostat, Community Survey on use of ICT by enterprises (covering enterprises with at least 10 persons employed). The figure refers to the NACE (REV. 2) category 10_G47: Retail trade, except of motor vehicles and motorcycles. In the whole business economy (excluding the financial sector), the share of e-commerce turnover in total turnover was 17% in 2015.

⁶ COM(2015) 192 final.

⁷ COM(2015) 550 final.

⁸ SWD(2016) 70 final; Mystery shopping survey on territorial restrictions and geo-blocking in the European digital single market: http://ec.europa.eu/consumers/consumer_evidence/market_studies/docs/geo-blocking-exec-summary_en.pdf; Report of public consultation: <https://ec.europa.eu/digital-single-market/en/news/full-report-results-public-consultation-geo-blocking>

This Communication presents a package of measures containing four key DSM proposals to boost the potential for cross-border e-commerce in Europe:

- A legislative proposal on addressing unjustified geo-blocking and other forms of discrimination based on nationality, place of residence or place of establishment within the Single Market;
- A legislative proposal revising the Regulation on Consumer Protection Cooperation;
- A legislative proposal (Regulation) proposing measures in the area of parcel delivery;
- Guidance on the implementation/application of the Directive on Unfair Commercial Practices.

The Communication explains how these four proposals relate to and complement each other and also how they relate to the other DSM proposals with major benefits for e-commerce, namely:

- The two legislative proposals on the supply of digital content and on online and other distance sales of goods which the Commission already adopted in December 2015;
- Upcoming VAT simplification proposals which are envisaged to be adopted in autumn 2016.

Together with existing rules such as the e-Commerce Directive⁹, consumer and marketing law including the Consumer Rights Directive¹⁰, the newly reformed data protection framework and competition law, these proposals, once adopted, will establish a comprehensive framework for unleashing the potential of e-commerce in Europe for the benefit of both consumers and businesses.

In parallel with the adoption of the e-commerce package the Commission is also presenting a Communication on the results of its comprehensive assessment of the role of platforms and of online intermediaries, as well as its proposal for revision of the Audiovisual Media Services Directive (AVMSD). As regards the former, online platforms have dramatically changed the digital economy over the last two decades and play an important role in the digital value chains that underpin e-commerce in the EU. In order to make the most of the opportunities presented by e-commerce, the EU needs to create the best possible business environment for online sellers, as well as for the online e-commerce marketplaces on which many online sellers rely. In its Communication on platforms the Commission presents its assessment and policy approach to supporting the development of online platforms in Europe.

The proposal for the revision of the AVMSD aims to modernise the rules so as to reflect market, consumption and technological changes. The proposal focuses on the scope of the AVMSD and on the nature of the rules applicable to all market players, in particular those for the promotion of European works, protection of minors, combatting hate speech and advertising rules.

2 A comprehensive and integrated approach to stimulating e-commerce

The full potential of the European e-commerce market in terms of contribution to growth and new sources of employment has not yet been reached. Barriers and fragmented rules discourage companies from cross-border trading and prevent consumers from benefitting from the most competitive offers and from the full range of online offers.

⁹ Directive 2000/31/EC.

¹⁰ Directive 2011/83/EU.

Growth potential of e-commerce still untapped

In 2015, only 9% of EU enterprises in the retail trade sector sold online to consumers in other EU countries, while 24% did so domestically¹¹. In the economy as a whole, only 19% of SMEs sell online (compared of 43% of large enterprises), and only 8% of SMEs sell online to other EU countries (compared to 23% of large companies)¹². In 2015, only 16% of consumers purchased online from another EU country, while 47% did so domestically¹³. The share of e-commerce in the total retail sector remains lower in Europe than in the USA: in 2015, the share of e-commerce in total retail in the EU was around two thirds that of the USA¹⁴.

Through the series of DSM measures presented above the Commission is taking a comprehensive approach to tackling different aspects of the barriers which prevent cross-border e-commerce from flourishing, including addressing the needs of SMEs, which are the bulk of the EU economy and are lagging behind in the digital challenge. Creating the right conditions for e-commerce to thrive requires:

- Giving consumers and businesses (particularly start-ups and SMEs) better access to goods and services offered online across Europe;
- Building trust for consumers and providing greater certainty for businesses with clear, less fragmented rules for online sales of goods and supply of digital content;
- Reducing transaction costs and administrative burden for businesses when trading online across borders.

| Better online access to goods and services | Building trust for consumers and providing greater certainty | Reducing transactions costs and administrative burden |
|---|---|--|
| <ul style="list-style-type: none">• Ban unjustified geo-blocking• Equal and stronger enforcement of rules across the EU• Lower cross-border delivery prices | <ul style="list-style-type: none">• Lower cross-border delivery prices• Facilitate payment methods• Common contract rules• Equal and stronger enforcement of rules across the EU• Guidance on Unfair Commercial Practices | <ul style="list-style-type: none">• Reduce VAT burden• Reduce costs of fragmented contract rules• Lower cross-border delivery prices |

Better online access to goods and services

The Commission's strategy is to achieve the above three goals through a combination of measures in an integrated way. The geo-blocking proposal aims to provide the opportunity for consumers and businesses to benefit from greater choice by banning discrimination practised by retailers against consumers or businesses from other Member States. It will make offers of traders in other countries more visible, increase the range of products to choose from and the possibility to look for the best offer when purchasing services and goods online.

¹¹ Eurostat, Community Survey on use of ICT by enterprises (covering enterprises with at least 10 persons employed). The figure refers to the NACE (REV. 2) category 10_G47: Retail trade, except of motor vehicles and motorcycles.

¹² Eurostat, Community Survey on use of ICT by enterprises (covering enterprises with at least 10 persons employed). The figure refers to the whole business economy (excluding the financial sector).

¹³ Eurostat Community Survey on ICT usage in households and by individuals, 2015 (isoc_ec_ibuy).

¹⁴ <http://www.retailresearch.org/onlinetailing.php>

The Commission considers however that it would be too burdensome for traders of goods to be obliged to deliver outside their current reach. Additional measures are necessary to help EU citizens and businesses access sellers and buyers in other Member States, inter alia by ensuring that they are able to obtain affordable cross-border parcel delivery services. The cost and efficiency of parcel delivery should not be an obstacle to cross-border e-commerce. By encouraging competition and increasing the transparency of tariffs the Commission aims to reduce unjustifiable tariff differences; for example list prices for cross-border parcel delivery can be as much as 5 times higher than for the domestic equivalent.¹⁵

The geo-blocking proposal will be more effective if we have a much stronger approach to enforcement. Once adopted, the geo-blocking instrument would be included and enforced for business to consumer (B2C) relations under the mechanism set out in the Regulation on Consumer Protection Cooperation (CPC), which is also being revised with the aim of strengthening its mechanisms and making them fit for digital markets. Geo-blocking may be linked to agreements between suppliers and distributors. Such agreements may restrict competition in the Single Market in breach of EU competition rules. To ensure that the geo-blocking Regulation achieves its objectives, agreements with traders containing passive sales restrictions (obligations not to respond to unsolicited requests from individual customers) which are in violation of the Regulation will be automatically void.

Building trust for consumers and greater certainty for business

In addition to affordable cross-border delivery services, trust also crucially depends on payment methods. Under the geo-blocking proposal traders will not be forced to accept any specific means of payment, but they should not refuse payments for reasons related to nationality, place of residence or place of establishment.

Uncertainty about their key contractual rights is a major reason for consumers' lack of confidence and trust in shopping online across borders¹⁶. Under the Commission's proposals of December 2015 on the supply of digital content and on online and other distance sales of goods¹⁷ consumers will have a fully harmonised clear set of mandatory rights throughout the EU and will therefore be more confident in accessing digital content or buying goods across borders. The strengthened and more efficient enforcement cooperation framework will also boost trust and reduce the consumer detriment.

Clarity on legal rules also helps to build trust. In its Guidance on the implementation/application of the Unfair Commercial Practices Directive¹⁸ (UCPD) the Commission is clarifying its understanding of certain key concepts and provisions of the Directive, which is one of the most frequently used legal bases by the Consumer Protection Cooperation Network. The Guidance has been expanded to cover topics such as the interplay between the UCPD and other EU legislation, the growing case-law of both the Court of Justice and national courts, and the application of the transparency requirements of the Directive to new business models, especially in the digital sector.

Reducing transaction costs and administrative burden

Where businesses direct their activities to other Member States they may consequently have to adapt their contracts to consumer contract requirements of the consumer's country or pay VAT in the country of destination. To reduce the costs businesses encounter in such cases, the Commission has already proposed at the end of 2015 measures to fully harmonise in a targeted way the key mandatory consumer rights in relation to the supply of digital content and the online and other distance sales of goods. The Commission will also address the administrative burden on businesses arising from different VAT regimes by presenting legislative proposals to extend the current Mini One Stop Shop

¹⁵ SWD (2016) 166.

¹⁶ SWD (2015) 100.

¹⁷ COM/2015/0634 final; COM/2015/0635 final.

¹⁸ Directive 2005/29/EC.

to tangible goods sold online, meaning that businesses would be able to make a single declaration and VAT payment in their own Member State.

3 Geo-blocking and other forms of discrimination: Abolishing discrimination based on nationality or place of residence

Despite the harmonisation brought about by the Services Directive¹⁹ and the e-Commerce Directive, the Single Market for services remains fragmented, while enforcement of those rules is inconsistent. For e-commerce to thrive in Europe action is needed to prevent unjustified geo-blocking and other forms of discrimination effectively. By clarifying situations where the differentiated treatment of EU consumers and businesses for reasons related to their nationality, place of residence or place of establishment cannot be justified by objective reasons, the Commission's proposals will bring legal certainty and help to break down barriers for customers without imposing a disproportionate burden on businesses.

The geo-blocking initiative covers services included within the scope of the Services Directive and, to a large extent, the e-Commerce Directive, such as online and offline retail sales of goods, electronically supplied services, including those giving access to non-audio-visual digital content (music, e-books, software, games), tourism services, entertainment, and business services.²⁰

This initiative will impose a non-discrimination obligation, as regards both direct and indirect discrimination, based on nationality, place of residence or place of establishment. In other words in the situations covered by the proposal customers from other Member States will be able to buy under the same conditions as local customers. For electronically supplied services (such as cloud services, data warehousing, website hosting), the Commission is proposing to delay the application of the non-discrimination provision until mid-2018, in light of their specific characteristics and in order to allow service providers to prepare for the changes. For the non-audio-visual online content services concerning copyright protected works, the non-discrimination provision does not apply at this stage although the possibility of its extension to these services will be subject to a review. The Commission will engage with stakeholders in order to prepare such a review, including on the basis of evidence and information already gathered. However, other rules such as no blocking of access to online interfaces, no re-routing without the customer's consent and no discrimination related to payment means, will apply to these services from the outset.

Too often consumers still face geo-blocking and geo-discrimination practices:

Only 37% of websites actually allowed cross-border EU visitors to complete a purchase successfully in 2015²¹. This situation has not improved compared to 2009. 36% of online retailers stated that they did not sell across borders in at least one product category in which they are active²². Regarding consumer experiences, 19% of cross-border online shoppers had experienced restrictions at one stage or another of the purchasing process²³. During the public consultation more than 90% of consumer respondents agreed or strongly agreed that consumers and businesses should be able to purchase and access services everywhere in the EU. More than 80% of consumer respondents indicated that they have experienced geo-blocking²⁴.

¹⁹ Directive 2006/123/EC.

²⁰ Audio-visual content is outside the scope of the Services Directive and is therefore excluded from the scope of the geo-blocking initiative.

²¹ European Commission, Mystery Shopping survey on territorial restrictions and geo-blocking in the European Digital Single Market, May 2016. http://ec.europa.eu/consumers/consumer_evidence/market_studies/docs/geoblocking-exec-summary_en.pdf

²² SWD(2016) 70 final.

²³ Flash Eurobarometer 397 (2015), 'Consumer attitudes towards cross-border trade and consumer protection' (<http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2031>).

²⁴ <https://ec.europa.eu/digital-single-market/en/news/full-report-results-public-consultation-geoblocking>

Sales of goods without delivery

When selling goods the trader cannot discriminate against its customers. In particular, while the trader will not have to deliver the goods to the country of the customer (given the potentially high delivery costs) he will, in addition to clearly and legibly informing the customer about existing delivery restrictions in line with the Consumer Rights Directive²⁵, also have to provide the customer with the same delivery options he offers to local customers (e.g. delivery to an address provided by the customer in that country, pick-up at a collection point, etc.). The Commission's parcel delivery proposal (see next section) addresses the affordability of cross-border delivery and returns, in particular for SMEs and consumers, especially in rural and peripheral regions.

Access to electronically supplied services

Customers will be able to purchase on a non-discriminatory basis across borders electronically supplied services, such as cloud services, data warehousing, website hosting, remote system administration, installation of filters, firewalls, banner-blockers etc.²⁶ However, the application of the prohibition of discrimination for electronically supplied services is delayed until mid-2018 in light of their specific characteristics and in order to allow service providers to prepare for the changes. For these services, there is no need for physical delivery.

Services received in other Member States than that of the customer

Traders should not refuse to sell or differentiate between customers as regards prices or other conditions at the same point of sale (including websites) for reasons related to their nationality, place of residence or place of establishment, if the service in question is used or consumed by the customer outside his own Member State (e.g. concert tickets, rental of accommodation, car hire). Traders continue to have the freedom to set different prices across different websites but customers should be free to choose from which website they wish to buy without being discriminated against.

Non-discrimination in payments

The geo-blocking initiative does not force traders to accept any specific means of payment, but it includes a requirement that traders cannot refuse payments or otherwise apply different payment conditions for reasons related to the customers' nationality, place of residence or place of establishment, in situations where the trader can request strong customer authentication and the payments are in a currency that the trader accepts. Traders are not allowed to reject payment instruments (such as credit or debit cards) issued in another country if they accept the same type of payment instruments issued to customers in their country.

Examples:

Sales of physical goods

A customer based in Belgium wants to buy a piece of furniture from a company in Germany. The customer cannot be blocked from visiting the company's website or from placing an order and the company should not refuse the customer's card if they accept the same debit or credit card issued to customers in their country. The German company will have to offer the same terms and conditions as they offer to local customers (including price) and will not be required to deliver the furniture to Belgium but should provide for pick-up by the Belgian customer at a German address or collection point, as they do for local customers.

Sales of electronically supplied services

²⁵ Directive 2011/83/EU.

²⁶ As part of a forthcoming proposal under the Digital Single Market Free flow of data initiative the Commission will also address possible restrictions on access to such services based on data location requirements.

A customer based in France wants to buy cloud services from a company in the UK. The French customer cannot be blocked from visiting the UK company's website or from placing an order because he or she is French. Neither can the company refuse the customer's card if they accept the same type of debit or credit card issued in its home country. In this case the question of physical delivery of the product does not arise, as the services are being supplied electronically.

"Same place, same service, same deal"

A German customer wants to rent a car in Spain from a car hire company via the company's German website, but then realises that the Spanish version of the car hire company's website offers the rental of same car, on the same dates, with the same conditions, at a much lower price. In that case the customer cannot be prevented from booking the car via the Spanish website. Nor should the price suddenly increase once the customer has entered his or her details for country of residence; the customer is entitled to get the same deal as any other customer booking through the Spanish website.

4 Ensuring affordable Parcel Delivery solutions

Affordable and high-quality cross-border delivery services are essential in making sure that consumers use cross-border online sales. In its 'Towards a Digital Single Market Act' resolution²⁷, the European Parliament stressed that accessible, affordable, efficient and high-quality delivery services are a pre-requisite for cross-border e-commerce to thrive. It also supported measures to improve price transparency and regulatory oversight directed at the smooth functioning of cross-border parcel delivery markets.

High prices for cross-border delivery for e-retailers are an obstacle to cross border e-commerce

Public cross-border prices charged by universal service providers are often three to five times higher than the domestic equivalent and that these differences cannot always be explained by labour or other costs in the destination country.²⁸

Consumers and small businesses report that high prices for parcel delivery prevent them from selling more to or buying more from other Member States.²⁹ Prices from seemingly similar Member States, over comparable distances, sometimes vary significantly without obvious explanatory cost factors. High prices for cross-border delivery for e-retailers and consumers, in particular in remote areas and for SMEs, are therefore an obstacle to cross border e-commerce. Low volumes reduce bargaining power, leading to higher prices and fewer delivery options on offer for small e-retailers and individuals. The limited mandate of many national regulatory authorities to monitor the cross-border parcel market results in a lack of information on possible market inefficiencies or other regulatory concerns.

In concrete terms the parcel delivery proposal seeks to:

- Enhance transparency of tariffs and terminal rates for certain cross-border parcel delivery services and require the assessment of the affordability by National Regulatory Authorities (NRAs) of certain cross-border tariffs. The proposal will ensure that this affordability assessment will remain strictly proportionate to the objectives pursued;
- Improve oversight by requiring that all parcel delivery operators (above a certain size) to submit a basic set of statistical data to NRAs;

²⁷ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0009+0+DOC+XML+V0/EN>

²⁸ Econometric study on parcel list prices (Université Saint-Louis Bruxelles, November 2015), see http://ec.europa.eu/growth/sectors/postal-services/studies/index_en.htm

²⁹ http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8169

- Encourage competition by requiring transparent and non-discriminatory third party access to cross-border parcel delivery services and/or infrastructure of universal service providers whenever the latter conclude multilateral agreements on terminal rates.

This will encourage competition and make the regulatory oversight of the parcels markets more effective and consistent. Increasing the transparency of tariffs will help reduce unjustifiable tariff differences and lower the tariffs paid by individuals and small businesses, especially in remote areas.

The proposal complements other initiatives, largely of a self-regulatory nature, that have recently been launched by stakeholders (such as the national postal operators) in order to improve the quality and convenience of cross-border parcel delivery services. Together with the geo-blocking proposal, it would create new market opportunities for operators that want to participate actively in cross-border e-commerce.

5 Effective cross-border Consumer Protection

The Consumer Protection Cooperation (CPC) Regulation, adopted in 2004, has strengthened the enforcement of consumer laws across the EU, but a high level of non-compliance with key consumer rules persists in the main online consumer markets. The current framework needs to be modernised to provide for stronger and faster mechanisms to ensure an equal and consistent enforcement of these laws across the EU and especially in the Digital Single Market.

A high level of non-compliance with the key consumer rules

The current rate of business non-compliance with the EU consumer acquis shows that enforcement is suboptimal. Based on conservative estimates, 37% of e-commerce or booking websites do not respect basic consumer rights. This generates a detriment estimated to be about EUR 770 million per year for consumers shopping online across borders in travel, entertainment, clothing, electronic goods and financial services.³⁰

Assessment of the implementation of the CPC Regulation as a cross-border enforcement instrument of the EU consumer acquis has identified several gaps. Mutual assistance mechanisms are insufficient and the response to widespread infringements across the EU is inefficient, especially when those occur in the digital environment. The detection of such infringements is very often difficult and slow. Finally, national enforcement plans do not give sufficient priority and resources to enforcement actions that relate to cross border markets.

The proposed new CPC Regulation will:

- Provide a strengthened and more efficient enforcement cooperation framework that will increase legal certainty, especially for traders and consumers active across borders;
- Enable authorities, by means of additional powers, jointly to act faster to stop widespread online infringements (e.g. interim measures to block infringing websites); and
- Provide a single procedure, coordinated by the Commission, when the problems are of a Union dimension.

These elements should lead to increased legal certainty in the Single Market via strong and coherent enforcement of consumer law. They should also reduce compliance costs for companies operating

³⁰ COM (2016) 284.

across the Single Market. Where problems have a Union dimension there will be a one stop shop approach to enforcement for the businesses concerned, with the objective of securing commitments rapidly and avoiding prolonged harm to consumers.

The laws that protect consumers' interests covered by the CPC mechanism are listed in the Annex to the Regulation. That Annex has been regularly updated when new legislation was established, as is foreseen for the above-mentioned legislative proposal on geo-blocking and other forms of discrimination. In order to strengthen the reach and efficiency of the new CPC Regulation, it is proposed to include additional acts of Union legislation which also pursue consumer protection objectives³¹.

With a view to the development of e-commerce for financial services within the Single Market, it is proposed that the Mortgage Credit Directive³² and the Payment Accounts Directive³³ also be included in the Annex to the Regulation, so that regulators would have the right to act together in cases where the services provided under these directives are not in line with their provisions on consumer protection.

6 Guidance on the Directive on Unfair Commercial Practices

A key piece of legislation to boost fairness in e-commerce transactions is the Unfair Commercial Practices Directive (UCPD). Indeed, due to its very broad scope (it applies to all economic sectors, both on and offline), the Directive provides a key legal basis to ensure that consumers are not misled or exposed to aggressive marketing and that commercial claims made by traders targeting consumers in the EU are clear, accurate and substantiated.

The new Guidance on the application of the UCPD³⁴ in the online environment addresses in particular the following issues:

- It explains that any platform that qualifies as a "trader" and engages in B2C activities directly connected with the promotion, sale or supply of goods, services or digital content to consumers must make sure that its own commercial practices fully comply with this Directive.
- It clarifies the interplay between the UCPD and the e-Commerce Directive. In their own field of activity (intermediation services) online platforms³⁵ are under a professional diligence duty³⁶ to take appropriate measures which – without amounting to a general obligation to monitor or carry out fact-finding – enable third party traders to comply with EU consumer and marketing law and help users to understand with whom they are concluding contracts. For example, such measures could imply (i) enabling relevant third party traders to indicate to users that they are traders; (ii) clearly indicating to consumers that EU consumer and marketing law only applies where such third party suppliers are traders; (iii) designing their web-structure in a way that enables third party traders to present information to users in compliance with EU consumer and marketing law.
- It clarifies that if online platforms acting as a trader and engaging in B2C commercial practices fail to comply with such professional diligence requirements they can be found in breach of EU consumer and marketing law with regard to their own commercial activities, if consumers have

³¹ This concerns the anti-discrimination clause in the Services Directive (2006/123/EC, Art.20), rights of passengers by rail (Regulation (EC) N° 1371/2007), rights of disabled passengers by air (Regulation (EC) N° 1107/2006) and common rules for operating air services (Regulation (EC) N°1008/2008).

³² Directive 2014/17/EU.

³³ Directive 2014/92/EU.

³⁴ SWD(2016) 163.

³⁵ Those which qualify as a 'trader' within the meaning of the UCPD.

³⁶ As regards the platform's own commercial practices towards consumers.

been or are likely to be misled. With respect to such own activities they cannot invoke the intermediary liability exemption under the e-Commerce Directive, as that exemption only applies with respect to information stored at the request of others. Similarly, under the UCPD, search engines are required clearly to distinguish paid placements from natural search results.

- It takes account of the principles agreed upon by the Multi-stakeholder group on Comparison Tools, which included major industry and consumer representatives, operators of comparison tools and national authorities and was coordinated by the Commission. Going beyond the UCPD transparency and professional diligence requirements, comparison tool providers endorsing these self-regulatory principles commit to be particularly transparent about their business models and to adequately disclose their commercial ties with traders whose products are compared through their platforms.

The Guidance also refers to the “compliance criteria” agreed upon by the Multi-stakeholder Group on Environmental Claims, to support the application and enforcement of the UCPD against misleading and unfounded environmental claims and the provision of clear, relevant and credible consumer information.

Finally, the revised Guidance clarifies the interplay between the UCPD and sector-specific pieces of EU law, including rather newly adopted legislation such the Consumer Rights Directive and the revised Directive on package travel and linked travel arrangements. With reference to the latter, and in compliance with the commitment taken vis-à-vis the European Parliament on the occasion of its adoption in 2015, the revised Guidance explains that practices whereby traders of the travel and transport sector offer services to consumers in an unclear or ambiguous manner, such as by hiding or making it difficult for the consumer to select the option of not booking any additional travel services, can be caught under the UCPD.

Beyond the four key initiatives in this e-commerce package, the following sections describe two other DSM proposals which form part of the Commission's comprehensive approach with major benefits for e-commerce.

7 Simple and effective cross-border contract rules for consumers and businesses

To facilitate cross-border trade, in December 2015 the Commission adopted proposals, accompanied by a Communication³⁷, for (i) a Directive on certain aspects concerning contracts for the supply of digital content³⁸, and (ii) a Directive on certain aspects concerning contracts for the online and other distance sales of goods³⁹. Together with the Proposal for a Regulation on cross-border portability of online content services⁴⁰, these proposals were the first new legislative initiatives adopted under the Digital Single Market Strategy. Once adopted, the two Directives will fully harmonise in a targeted way the key mandatory consumer rights applicable to the supply of digital content and the online and other distance sales of goods. They will support e-commerce by:

- **Reducing costs resulting from differences in contract law:** The proposals will make sure that the key consumer contract law rules on faulty goods and digital content will be the same in all Member States;

³⁷ COM/2015/0633 final.

³⁸ COM/2015/0634 final.

³⁹ COM/2015/0635 final.

⁴⁰ COM/2015/0627 final.

- **Creating legal certainty for businesses:** Unlike today where they face a complex legal framework, businesses will be able to supply digital content or sell goods online throughout the EU based on the same set of consumer contract rules;
- **Helping consumers to gain from online cross-border shopping in the EU:** Consumers will have a fully harmonised clear set of rights throughout the EU and will therefore be more confident in accessing digital content or buying goods cross-border;
- **Reducing the detriment suffered by consumers with respect to defective digital content:** Unlike today, where there are no EU-wide specific contractual rules on the supply of digital content, consumers will have clear and digital-specific rights when facing problems with digital content. This will enable them to seek remedies and thus reduce the detriment they currently suffer when they acquire faulty digital content.

8 Reduce the administrative burden on businesses arising from different VAT regimes

When it comes to VAT the complications of having to deal with many different national systems represent a real obstacle for companies trying to trade across borders both on and offline. Since 1 January 2015, with the entry into force of new "place of supply" rules, VAT on all telecommunications, broadcasting and electronic services is levied where the customer is located, rather than where the supplier is based.

In parallel, an electronic registration and payment system (the Mini One Stop Shop), has been implemented to reduce the costs and administrative burdens for businesses concerned. The Commission will present legislative proposals in 2016 to reduce the administrative burden on businesses arising from different VAT regimes including:

- extending the current Mini One Stop Shop to intra-EU and third country online sales of tangible goods. Instead of having to declare and pay VAT to each individual Member State where their customers are based, businesses would be able to make a single declaration and payment in their own Member State;
- introducing a common EU-wide simplification measure (VAT threshold) to help small start-up e-commerce businesses;
- allowing for home country controls including a single audit of cross-border businesses for VAT purposes;
- removing the VAT exemption for the importation of small consignments from suppliers in third countries.

These measures should ensure that VAT related aspects will no longer represent an obstacle to cross-border e-commerce.

9 Conclusion

The proposals included in this package of e-commerce measures, as well as the digital contracts proposals and the VAT simplification proposals to come, should each make a significant contribution to stimulating increased cross-border e-commerce in Europe. Their impact is even stronger in a package. Measures to prevent unjustified geo-blocking should be accompanied by better enforcement, more competitively priced parcel delivery, harmonisation of contract law rules and simplification of VAT. The Commission strongly recommends that stakeholders, the European Parliament and the

Council, consider these measures as complementary to each other and urges their quick adoption in the legislative process, given the need to remove remaining barriers rapidly. The different proposals are essential parts of a complete package, all of which are necessary to achieve the full benefits of cross-border e-commerce.