



10.7.2012

# NOTICE TO MEMBERS

(5/2012)

Subject: **Summary of E-Commerce Working Group**

## INTRODUCTION

IMCO, building upon its report, which was the basis of the EP's resolution on "Completing the internal market for E-commerce", adopted in September 2010, has launched in March 2011 a Working Group on e-commerce. Following a successful first cycle of meetings,<sup>1</sup> IMCO has decided to renew the mandate on 31st August 2011 for the Working Group on E-commerce to continue of its work under the coordination of the Coordinator of the Working Group on E-commerce - Mr Pablo Arias Echeverria during a second cycle of meetings.<sup>2</sup> Mr

<sup>1</sup> **The first cycle of E-Commerce Working Group meetings took place as follows:**

23rd March 2011: First meeting of the Working Group: How to overcome the current barriers to cross-border e-commerce?

19 April 2011: Second meeting of the Working Group: How to create confidence in E-commerce?

3 May 2011: Third Meeting of the Working Group: Data protection implications, the role of internet platforms and, how to launch an EU Trustmark for E-commerce users?

31 May 2011: Last meeting:

12 July 2011: Conclusions. Presentation of the conclusions in IMCO Committee.

<sup>2</sup> **The 2nd cycle of E-Commerce Working Group meetings took place as follows:**

11th January - Presentation of the forthcoming EU Commission Communication on by Werner Stengg

8th February - E-Procurement and E-Signatures

22nd March - Data Protection

11th April - Retailers and e-commerce

16th May - SMEs and the Digital Single Market

Arias Echeverria is also the Rapporteur for both 'Completing the internal market for E-commerce', adopted in IMCO in June 2010 (the basis of the September 2010 resolution) and for the draft report Completing the Digital Single Market (to be adopted in IMCO in October 2012). During the four meetings of the first period of sessions of the Working Group, most of the questions that affect e-commerce were discussed from an open perspective. Policy makers, representatives of the private sector and experts have exchanged ideas and put on the table the topics and questions that need to be reshaped in order to achieve a real improvement of the current situation

The primary task of this working group is precisely to overcome these barriers to allow a natural evolution and consolidation of the digital market and achieve the activation of e-commerce in Europe.

On 11 January 2012, the Commission has released a Communication: 'A coherent framework to build trust in the Digital single market for e-commerce and online services' which includes an action plan which updates and completes the impact of the Electronic Commerce Directive, based on the result of the consultation already carried out 2010 and the work carried out by IMCO in 2010 and 2011.

Building upon the results of the discussions in the second cycle of the Working Group and the outcome of the studies ordered on e-commerce, which were presented during the 7th meeting of the Working Group, Mr Arias Echeverria presented his response to the Commission's Communication as well as called for further thinking in his new draft report: Completing the Digital Single Market.

In his draft report, the Rapporteur welcomes the 5 recommendations for action for developing policy and practice in the field of the Commission Communication on a 'Coherent framework for building trust in the Digital Single Market for e-commerce and online services' but he would seek a in-depth analysis for the following four inter-connected action points:

1. Single and Medium Sized Enterprises.
2. Overcoming remaining barriers in the Digital Single Market.
3. Building confidence and trust in the Digital Single Market.
4. Setting up the basis for a more competitive Europe

Electronic commerce constitutes an important means to promote cross-border trade, improving the accessibility of Europe's population to more varied products, to more qualitative products, and exerting greater price competition in the on-line and off-line world. However, 10 years after the adoption of the "directive concerning certain legal aspects of information society services and, in particular, electronic commerce" the so-called Electronic

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6th June - Presentation by Vice-President Ms Neelie Kroes, Commissioner for the Digital Agenda in Europe and Mr. Michel Barnier, Commissioner for Internal Market and Services.  
28th June Presentations of the 6 studies ordered on E-commerce  
10th July - Presentation in IMCO Committee of the main Conclusions.

Commerce Directive, the development of retail electronic commerce, especially cross-border, remains limited to less than 6% of European total retail trade.

### **The “Electronic Commerce” Directive**

The “Electronic Commerce” Directive, which is still very current today, aims to remove barriers to the establishment of providers of information society services and to the cross-border provision of on-line services in the internal market, therefore giving both to businesses and to citizens legal certainty. Technologically neutral, it covers a broad field: not only electronic commerce (businesses-to-business and business-to-consumer) in the strictest sense (including on-line pharmacies), but also on-line newspapers, on-line financial services, services of regulated professions, etc. On-line gambling, however, is excluded.

The Directive, which aims towards maximum harmonisation, has five key provisions:

- The internal market clause (Article 3) which, although subject to derogations, provides the legal certainty which is essential to the development of cross-border on-line services. This clause is otherwise known as the “country of origin principle”: each Member State shall ensure that the information society services provided by a service provider established on its territory complies with the national provisions applicable in the Member State in question which fall within the “coordinated field”, even when he provides the service in another Member State.
- Requirements aimed at facilitating the development of providers of information society services, boosting confidence and strengthening legal security (Article 4): namely the prohibition of prior authorisations, obligations to provide information and ensure transparency with a view to ensure consumer confidence as well as the provision of a framework for commercial communications (Articles 6 to 8). It abolishes the prohibition of commercial communication for the regulated professions, enabling them to open internet sites, and leaves it to the professional associations to regulate such new practices in their codes of conduct.
- The regulatory framework for electronic contracts (Articles 9 to 11), including the harmonisation of the conditions necessary for the conclusion of such contracts (e.g. the obligation for the service provider to acknowledge the receipt of the customer/user without undue delay and by electronic means).
- The regulation of the exemptions of the liability of intermediaries (Section 4, Articles 12 to 15) with a view to ensuring, on the one hand, the provision of basic intermediary services guaranteeing the free movement of information on the network and, on the other, a legal framework enabling the development of the internet and electronic commerce.
- Administrative cooperation (Articles 19 and 3.4), both between Member States and between the Member States and the European Commission, with a view to ensuring the proper implementation of the Directive, through mutual assistance and the setting up of contact points. It also encourages Member States to inform the European Commission of important administrative and legal decisions taken on their territory regarding disputes relating to information society services and of practices, usages and customs relating to electronic commerce.

## **The output of the IMCO Working Group on E-Commerce**

On 31st August, the Coordinators mandated Mr Arias to continue with the coordination of the Working Group on E-Commerce. The Working Group acts as a *strategic chapeau* for e-Commerce and will build upon the previous work already carried out in its initial 4 meetings.

It structures its work around key issues and discusses loopholes in E-commerce in view of completing the Digital Single Market.

A second cycle of meetings kicked off on 11th January 2012 on the day of the publication of the new Communication on E-commerce and online services with reporting to the Committee of the main findings every 6 months or earlier if deemed necessary. The proposed programme is as follows:

The aim of the first meeting of this second cycle was to discuss the new EC Communication 'A coherent framework to build trust in the Digital single market for e-commerce and online services'. On the same day as the publication of the Communication, 2 Staff Working Documents by DG Markt and DG Sanco respectively were published as well as A Green paper on an integrated European market for card, internet and mobile payments.

For the next meetings, Mr. Arias, together with members of the Working Group, who met informally on 9th November 2011, have identified a list of topics that could be central to the further development of e-commerce.

The order of the discussion of these topics as well as the agenda of the meetings was defined in consultation with the members of the Working Group. A list of studies has also been proposed below:

### **The list of topics that Mr. Arias proposes for discussion include, amongst others:**

- Updating legislation on Data Protection to the Digital World.
- E-Government, E-Procurement.
- E-Signatures and E-Authentication.
- SMEs and the Digital Single Market.
- Online Payments, E-invoicing and E-Commerce.
- Possibilities to create a European Trustmark.
- Online Alternative Dispute Resolution mechanisms.
- Updating legislation on Intellectual Property Rights, Fight Against Counterfeiting and Piracy.
- VAT.

### **The list of studies and briefing papers on e-commerce that have been ordered (publication date: June 2012):**

- Reviewing the Data Protection Package to take into account modern technologies while ensuring a very high level of protection in order to increase legal certainty,

consistent levels of privacy in order to boost E-commerce while ensuring the users' trust.

- Possibilities and obstacles to simplifying and modernising VAT in the Digital Single Market for E-Commerce.
- Possibilities and opportunities of creating a pan-European Trustmark for E-Commerce to increase consumers confidence while shopping online.
- A road map to Digital Single Market - prioritising necessary legislative responses to opportunities and barriers to e-commerce - a briefing paper.
- Streaming and on-line access to content and services - a new model for e-commerce
- State-of art Internet connectivity and its impact on e-commerce - briefing paper

The minutes of the 7 meetings of the Working Group have been put together in this 'Notice to Members' which has been translated in all languages. These minutes include also the main conclusions as well as points which call for further reflection in view of future action on e-commerce. The results of the working group on e-commerce have also been used to inform the IMCO draft report on 'Completing the Digital Single Market'. These will be presented in IMCO Committee on 10th July. The online market needs to be transformed into a real opportunity to fight against the economic crisis. E-commerce rules in Europe need to be updated to the 21st century's digital society.

**First Meeting of the Second Cycle of the IMCO Working Group on E-Commerce,  
Wednesday, 11th of January 2011  
From 15:00 to 17:30, Brussels  
Meeting room: ASP 5G2**

1. Mr. Pablo Arias Echeverría, MEP, the Coordinator of the Working Group on E-commerce, welcomed warmly all the participants and called for the adoption of the agenda. Prior to giving the floor to the speakers, Mr Arias Echeverría, highlighted the importance of E-Commerce as an essential tool for promoting employment and boosting the economy. He said that E-commerce is not only the future; it is already the present. SMEs are the backbone of our economy and E-commerce has been their way out of the current crisis. We need 'more Europe' to emerge stronger from the crisis. Legislative processes are relatively slow and we must ensure that the regulations that we adopt are not already obsolete when finally they are published. Most of us are not born in the Digital Age and it is a world that we do not trust. Trust is fundamental to strengthen the pan-European electronic commerce. This is the main focus of the E-Commerce Working - how to instil confidence at all level, both for consumers as well as businesses and how to make e-commerce an opportunity for all.

**2. Opening statement by Mr. Malcolm Harbour MEP, Chairman of IMCO Committee.**

Mr Harbour explained that an endorsement of the Single Market Act had been reached by the 27 EU Heads of State or Government during the December European Council summit and this was the top item in the whole summit. This implies the delivery of the 20 major commitments in the Single Market Act by the end of 2012, and this in itself is an important signal that we have a lot of work to do Getting the Single Market to work better for the citizens in creating jobs, but also developing a confidence in citizens to take part in the Single Market. IMCO's role is strategic, explained Mr Harbour as it combines the completion of the internal market while ensuring consumer protection. He pointed out that without competent consumers wanting to engage in the Single Market, than we would not have a Single Market Act.

Mr Harbour emphasised how critical the Digital Single Market is for job creation and growth. He referred to a recent study by McKinsey which highlights the three causes of the measured impact of the e-commerce arising from the restructuring and competitiveness of traditional businesses. A lot of attention has been focussed on the new businesses of e-commerce but actually the reconfiguration of traditional businesses is more important; and, competitiveness and driving growth from that is absolutely crucial. Small and medium businesses that are strong in internet usage have an average of 10% increase in production. What's more interesting is the businesses that heavily use web technology grow and export twice as much as businesses that do not use that technology. These are the sort of things that we have to get across to people. This also implies that, in terms of sustaining investment in broadband, developing that universal broadband capability that governments have signed up to in the Digital Agenda, and dealing with the barriers of e-commerce and with issues about consumer confidence, these really have to be part of our political priorities over the next 4 months and

beyond. DG Markt's pamphlet - "Europe's Single Market, Together For New Growth", which is the more popular version of the Single Market Act with charts, states that an increase consumer confidence in cross e-commerce will bring about an estimated economic gain of around 2.5 billion Euros. This is why consumer protection and single market policies go together.

**3. Presentation of the new Communication of the European Commission: Commission Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions of 11 January 2012 - A coherent framework for building trust in the Digital Single Market for e-commerce and online services - COM(2011)0942 final by Mr. Werner Stengg, Head of Unit, Ms Patricia Lamotte, Policy Officer and Mr Harrie Temmink, Deputy Head of Unit, DG Markt E3-Online and Postal Services. European Commission.**

Mr Stengg presented the new Communication on E-Commerce and on-line services published on 11th January 2012 aims at the development of: a) a coherent framework in e-commerce; b) the building of trust; c) e-commerce and online services - it is wider than just e-Commerce, in the following sectors: B2B, B2C, C2C, G2G, but not G2C. Many relevant measures were delivered last year. Under the Single Market Act and the Digital Agenda, the Communication puts forward an action plan which will facilitate cross-border access to online products and content, ultimately solve the problems of payment, delivery and consumer protection and information, and assist dispute resolution and the removal of illegal content.

This is a complex communication which involved a third of the European Commission's DGs. The Communication portrays how E-Commerce could evolve over the next years. Three Commissioners are involved: Mr Barnier, Mr Dalli and Mrs Kroes as well as 10 DGs.

It is artificial to speak of the Digital Single Market as a separate market as it affects also offline trade, so a Horizontal approach is called for. Despite the breadth of its scope, the Communication is as focussed as possible. Figures all point in the same direction: E-Commerce helps net job creation: 21% of GDP growth of the last 5 years; up to 20% of GDP growth till 2015 (e.g. UK, NL); 2.6 jobs were created for each job destroyed; and, 25% job growth in France since 2000. Online services are crucial to the economy: E-commerce on its accounts for 3.4% of retail sales in the 27 Member States; UK, France and Germany make up 70% of European E-commerce while 66% of US internet users made purchases online, 94% in South Korea and 57% in the EU. Online services are good not just for the European economy, but also for the development of the Internal Market, employment as well as the environment.

Ms Lamotte, explained in detail the Strategy envisaged by the Commission Communication. The Communication presents 5 priorities:

1. Develop the cross border and legal offer of online services
2. Improve consumer protection and information as well as information of merchants
3. Improve payments and delivery systems (parcels especially)
4. Manage better abuse and illegal contents (piracy and how can consumers complain if things go wrong)
5. Deploy high speed networks and advanced technological solutions.

In addition to the above mentioned 5 priorities, the strategy includes also the aim to:

- Create a coherent framework;
- Complement the previously announced initiatives where necessary;
- Keep the existing e-commerce directive as it stands as no revision appears to be required.

Each of the 5 priorities was then discussed in detail:

**Develop the cross border and legal offer of online services**

- There is a need for more legal certainty with better enforcement and a common sales law
- Unjustified discriminations need to be abolished in accordance with the guidelines of Article 20 of the Services Directive;
- More competition is needed to ensure net neutrality and the sound application of the vertical restraints regulation;
- Legal contents to be developed as foreseen in the IPR strategy, copyright levies;
- Information from the public sector needs to be improved and to this end a proposal for the revision of the Directive for re-use of public sector information has been adopted in December 2011.

**Improve consumer protection and information as well as information of merchants**

- Improve information about the merchants;
- Provide better comparison websites for consumers;
- Improve EU law enforcement through screening of transposition, improving administrative cooperation and the reinforcing the CPC network as well as the Negotiation of the Consumer Rights Directive;
- Data protection to be improved through a revision of the *acquis*;
- Follow-up to the online gambling green paper to be carried out;
- Online pharmacy with logo/Trustmark.

**Improve payments and delivery systems (parcels especially)**

- Payment security needs to be ensured with a payment fee transparency for both merchants and consumers. A Green paper has been published also on 11<sup>th</sup> January on an integrated European market for card, internet and mobile payments;
- When it comes to VAT, we need to have one-stop-shops for this for mini-enterprises and extend these to other sectors by 2015.
- Delivery costs convenience, in especially cross-border deliveries, needs to be ensured.

**Manage better abuse and illegal contents (piracy and how can consumers complain if things go wrong)**

- Fight against counterfeiting and piracy;
- Issue of Notice and Action procedures – no revision of the E-Commerce Directive is called for but an initiative is due in 2012;
- Improve law enforcement and redress (cf ADR-ODR initiatives).

**Deploy high speed networks and advanced technological solutions.**

- High speed networks are a prerequisite for the development of online services and to this end the following steps are necessary:
  - Guidelines for the preparation of broadband infrastructure projects and for smart specialisation strategies

- Recommendation on access-pricing schemes in the wholesale market
- Adoption of a guide on cost reduction techniques
- There is a need for increased radio spectrum availability for the use of mobile internet (cf Communication on spectrum-sharing)
- There is also a need to develop cloud computing (cf Strategy 2012).

In terms of quantifiable objectives, online services need to double before 2015; monitoring needs to be carried out annually and a conference will be organised in 2013 to present progress achieved.

Mr Temmink presented the Staff Working Document which accompanies the Communication. The aim of the Staff Working Document:

- It outlines the State of Play for online services;
- It evaluates the E-Commerce Directive including a certain level of clarification and serves as an application report for the E-Commerce Directive which is to be clarified especially regarding third level intermediaries;
- It outlines the regulatory and practical barriers to online Services in the Single Market, and the response of the Commission to them.

This Staff Working Document is based on a public consultation on the E-commerce Directive. The public consultation yielded 420 responses and these have been analysed on the further application of E-Commerce Directive (ECD). There is a lack of figures on what is happening online and a lack of information of implementation in the Member States.

**There is also a clear need of a better cooperation in the application and implementation of the ECD** (this will be discussed within one of the forthcoming E-commerce expert group meetings):

- There is a need for further information on the application of the ECD
  - Lack of information on actual implementation in the Member States
  - Lack of statistics on e-commerce
- There is also a need for better co-operation in the application and implementation of the ECD
  - Transparency Directive 98/48/EC - awareness
  - Derogations Article 3(4) ECD – IMI
  - Administrative cooperation under Article 19 ECD – awareness + IMI
  - Need for better enforcement of the ECD – monitoring
  - Need for further clarification on the online intermediaries liability regime – initiative on Notice and Action (see below)

### **Liability regime of E-Commerce Directive**

General features Articles 12-15:

- Technologically neutral
- Horizontal
- Focus on online intermediary *activities*: “mere conduit”, “caching” and “hosting” This could be the online access provider or could be any other intermediary - it could be anyone who could facilitate the dissemination of content online). Intermediate liabilities cannot be held responsible for information placed online provided they fulfil certain requirements.
- No general obligation to monitor information on the web to allow for free flow of information.

### **Liability exemption of hosting**

Conditions for liability exemption for hosting:

- The provider does not have *actual knowledge* of *illegal activity or information* and, as regards claims for damages, is not *aware of facts or circumstances* from which the illegal activity is apparent; or
- The provider upon obtaining such knowledge or awareness acts *expeditiously* to *remove* or *disable access* to the information.

**Public consultation on e-commerce and the liability regime**

The main problems evoked are:

- Legal uncertainty and compliance costs for online intermediaries
- Slow or no action to remove illegal content (The ECJ has not been so vociferous yet on online intermediaries' responsibilities)
- Fundamental rights aspects

**The Initiative on notice and action procedures**

- « Action » refers in particular to take-down and blocking of illegal content
- Issues to address:
  - The requirements for notices
  - The timeframe
  - Notice and notice
  - Transparency
  - Wrong notices or wrong takedown
  - Assessments of notices
  - Preventive measures
- Impact assessment will determine the content of the initiative
- Wrong notices and wrong takedown - what happens to remedy the block or remove legal material?
- Assessments of notices
- Preventive measures

**Integration with other Digital Single Market policies**

- Trust and Information
- Access to goods and services online
- Contracting
- Electronic payment and invoicing
- Delivery
- Dispute Resolution
- Cross-cutting issues (VAT, networks, environmental and international dimension)

**The annexes to the Staff Working Document include:**

- There is a Transposition table Directive 2001/31/EC
- Information on national legislation on “notice and action” procedures

**4. *Bringing the benefits from e-commerce to consumers*, by Ms Margareta Theelen, Deputy Head of Unit, Consumer Affairs, DG Health and Consumers.**

**Consumers’ benefits thanks to e-commerce in goods:**

**Increased choice**

- Domestically: 2,5 times as much choice online vs offline
- EU wide: 16 times as much choice online vs offline

**Lower prices**

- Cheaper online prices (including delivery costs) for about 2/3 product categories analysed

- When delivery costs were excluded, online prices were lower than offline prices for 13 out of 15 product categories studied

According to a study carried out by DG Sanco which informs this Staff Working Document, it was found that in the current situation, with e-commerce accounting for 3.5% of total retail, consumer welfare from lower online prices and increased choice equals €11.7 billion.

Should we continue with a fragmented market and E-commerce were to account for 15% of total retail, consumer welfare would amount to €50.5 billion; whereas, in a Digital Single Market and E-Commerce accounting for 15% of total retail, consumer welfare would increase to €204.5 billion. This is equivalent to 1.7% of EU GDP.

The study looked at **Cross-channel purchasing behaviour and it was found that** consumers who buy offline, research their purchases online and vice versa.

Online research, brick-and mortar purchasing:

- 15% visited sellers websites to research most recent purchase over 30€ in a shop
- 15% searched using a general search engine
- 13% searched using a price comparison website

Alternatively:

- 18% of online shoppers visited brick and mortar shops before they bought a product online

#### **Cross-border e-commerce – challenges on demand side**

It is clear from the study that consumers, who try e-commerce, like it and rightly so. Perceptions about fraud, delivery problems and redress are lower among those who tried it

- Among those who shopped cross-border, 58% are equally confident in cross-border and domestic e-commerce (34% in the general population)

#### **Cross-border transactions at least as reliable as domestic ones:**

- Only 13% of cross-border purchases were delayed (20% for domestic purchases);
- Products did not arrive in 4% of cross-border cases (5% for domestic purchases)

**Reliability of cross-border online transactions** (study from the European Consumer Centres)

- 94% of the products were delivered
- Only **1%** of products were faulty or different from what was ordered
- When returned within the cooling-off periods, products were reimbursed in 90% of the cases;
- However, 57% had problems in getting original delivery costs reimbursed. Some traders placed illegal restrictions on returning the goods (telling shoppers that they had not such a right)

#### **Cross-border e-commerce – challenges on supply side**

- **60%** websites were unsuitable for online shoppers from other Countries

**Actions needed to boost e-commerce include:**

#### **1. Simple, clear and transparent information**

- Trusted information intermediaries
- Domestic and Cross-border offers

- Information on Price and Quality
- Information to traders

## **2. Easier Redress**

- Measures to improve out-of-court dispute resolution including disputes related to online transactions

## **3. Better Enforcement**

- Facilitate further the dialogue between the ECC-Net and the CPC network
- Encourage CPC towards carrying out sweeps and developing its online enforcement capabilities

**More information can be found on:**

[http://ec.europa.eu/consumers/strategy/facts\\_en.htm](http://ec.europa.eu/consumers/strategy/facts_en.htm)

**In the discussion that followed,** the Commission was asked whether a time plan can be annexed to the Communication, with an indication to what's new and what needs to be strengthened further. It was felt amongst the attendees that though there are various views of the ECD, however it is certainly a sound instrument. Most issues seem to be addressed at the Member States, and this needs to move forward perhaps through the expert group. Earlier directives did not provide online rights for consumers and much work has taken place to enable this. When it comes to consumer rights, we were not born in this digital age and this deserves further scrutiny. Could the commission say something more on a potential Trustmark as this could solve most of the above issues? DIGIT has a study on how to improve the digital single market which includes how to improve Trustmarks.

**Second Meeting of the Second Period of Sessions of the IMCO Working Group on E-Commerce,  
Wednesday, 8th of February 2012  
From 10:00 to 12:30, Brussels  
Meeting room: ASP 1E1**

1. Mr Pablo Arias Echeverría, MEP, the Coordinator of the Working Group on E-commerce, welcomed warmly all the participants to the 2nd Meeting of the Working Group in the course of its second cycle and called for the adoption of the agenda prior to giving the floor to the speakers.
2. Opening statement by **Mr. Malcolm Harbour MEP**, Chairman of IMCO Committee.

Mr Malcolm Harbour emphasised that the Working Group is extremely important to the work of IMCO. IMCO has already adopted a report on e-procurement<sup>1</sup> previously and we have already legislation in front of us. However now we need to see how public procurement can encourage innovation. There is also a big engagement at Council level and the recent December Summit has identified the Digital Single Market as a top priority. IMCO has now been granted authorisation to carry out a report on 'Completing the Digital Single Market'.

***FIRST PANEL: E-PROCUREMENT***

3. ***E-Procurement: challenges and opportunities***, by **Mr. Alain Deckers**, Acting Head of Unit of E-procurement and economic analysis Unit, DG Internal Market and Services, European Commission.

Mr Alain Deckers opened his presentation by explaining that the approach to improving the use of E-Procurement is two-fold: supporting take-up via the legislative measures proposed by the Commission at the end of 2011, complemented by a number of non-legislative supporting measures. Whilst the current situation presents significant (but manageable) challenges, there are also large opportunities. E-Procurement can improve procurement outcomes by facilitating further integration of the Single Market – both in the traditional sense, but also in terms of the Digital Single Market. It can also create significant macro-economic impacts, particularly by reducing the costs in Public procurement. Considering the current context, this would be particularly important.

E-Procurement should ensure both faster and cheaper outcomes (for example generating savings on transaction and administration costs; and reducing the prices of goods, services and works). E-Procurement also helps make the overall process more transparent. This can lead to increased SME and cross-border participation as firms find it easier to identify and access opportunities, and should lead to increased competition (through increasing the number of bids). Equally, error rates can be reduced and quality improved.

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<sup>1</sup> Report on modernisation of public procurement,(2011/2048(INI), on modernisation of public procurement, A7-0326/2011

Those who have switched to E-Procurement commonly report savings of 5 to 20%. Making a 5% saving in the above threshold market, equates in financial terms to 20 billion euros. 5% savings on the full public procurement spend (estimated at over €2000 billion p.a.) could in theory deliver benefits greater than the combined deficits of Greece, Ireland and Portugal. Obviously, this is theoretical – the benefits would be spread across Europe depending on national public procurement spend and hence would not go directly to just those countries. However such savings are quite common (if not greater) - in Portugal the use of E-Procurement has been mandatory since late 2009 and the benefits are quite clear.

However, today, only 5-10% of the EU's public procurement market is conducted using E-Procurement. The reason for this 'underuse' is not one of technology – this exists. It is more one of people. There are two dimensions: inertia from the authorities (many do not seem to be convinced yet that this change would be to their benefit); and a certain lack of coordination (many different systems are being developed across the 27 Member States, which can lead to costs for companies, both within and across borders). The Commission is therefore adopting an integrated approach: Legislation and Flanking Measures.

In the legislative measures there are rules and procedures regarding the electronic means of communication. Notices announcing tender opportunities are already published using electronic means (over 95%). The next step is E-Access where documents are made available to bidders electronically with one-click (often by web-links). Under the 2011 proposals, and assuming the current timetable can be met, the target date for implementing these two phases for all procurement above the EU thresholds would be June 2014.

The next phase is E-Submission, which permits companies to submit bids through electronic means. This is the "bottle-neck" of the current process and is more complicated as it involves a two-way exchange of data (i.e. both bidders and public authorities exchange information electronically). The proposals suggest making the full use of electronic communications (and hence E-Submission) mandatory for central purchasing bodies (as these represent an aggregate demand) at the date of transposition (i.e. June 2014). For other groups there will be a 2 year transition (i.e. target date –June 2016). The remaining pre-award phases, E-Evaluation and E-Award, will not be made mandatory, though encouraged.

Aggregation of demand can be done electronically using for example dynamic purchasing systems (in essence, fully electronic open framework contracts). Other electronic tools covered by the proposals include:

- E-Catalogues which would help contracting authority to streamline how they request information and speed up processing.
- E-Certis, which is a database that contains information about the different certificates that national authorities can require bidders to submit. The proposals include an obligation for Member States to update information (the current system is voluntary) and also foresee that after 2 years Member States would not be able to require any certificates from bidders other than those listed in E-Certis.
- The proposed public procurement passport would show in one document, recognised by all authorities, that certain requirements have been met.

Regarding E-Signatures, the E-Procurement rules do not place an obligation on their use. The proposals contain references to the measures developed under the Services Directive,

leveraging the progress that has been made to ensure the mutual recognition of qualified signatures across Member States.

In terms of flanking measures, there are several projects:

1. An expert group has been set up to consider the key aspects of E-Tendering and which will produce a blue-print for a good E-Procurement system.
2. A study to benchmark E-Procurement systems in the EU aims to produce a 'Golden book' of existing E-Procurement procedures.
3. A study to develop EU wide indicators measuring take-up and impacts on cost saving and efficiency
4. The European Commission is funding a number of projects such as Peppol (Pan-European public procurement online), the Connecting Europe Facility (CEF).
5. Last but not least, as part of creating an "E-Commission", the European Commission aims to adopt e-procurement for its own work.

The proposed Directive on the award of concession contracts foresees a much lighter regime with a longer transition period (5 years) towards the full use of electronic means of communication i.e. target date June 2019.

**4. *Why E-public procurement is a priority for the European Union?* by Mr. Henrique Burnay, Consultant on European Policy, VORTAL.**

Mr Henrique Burnay explained that until 2010, the total use of E-Procurement in the EU was low except in Portugal where, since 2009, it was mandatory. E-Procurement allows more choice for public authorities and increases transparency. In Portugal, the point of departure was to make procurement lighter, enabling faster transactions and allowing for less use of papers. E-Procurement is used in both the *pre-* as well as *post* award stages. A survey showed better savings, transparency and efficiency as a result of E-Procurement.

Several cases demonstrate in the Green paper on E-Procurement that E-Procurement produces major savings when compared to the old method. Also relationships between buyers and suppliers are greatly improved. The administrative burden and burden costs are greatly reduced and any black listed companies can be easily checked. Portugal did the transition in 1.5 years and managed it well, not to mention that this helped also address public deficits. The costs of not implementing E-procurement are much higher than the effort of putting it together and Portugal's story is indeed a big success story. The target date for completing this process is 2014.

***SECOND PANEL: E-SIGNATURE, E-ID AND E-AUTHENTICATION***

- 5. *A Pan European framework for electronic identification, authentication and signature* by Mr. Gérard GALLER (DG INFSO A3 Internet Networks and Information Security) and Mr. Gábor BARTHA (DG INFSO H2 ICT for Government and Public Service. European Commission.**

Mr Gérard Galler explained that currently, the legal instrument which applies to E-signature is

Directive 1999/93/EC. E-signature standards are set by CEN and ETSO. In the context of the Services Directive 2006/123/EC, one finds:

- Trusted list of issuers of qualified signature certificates
- Points of single contact must handle ETSI signature formats

There is however to-date, no EU legislation on E-ID

E-Signatures are rarely used across borders, but the Comitology in the current directive is very limited and impedes us from going much further. There are new drivers for E-signatures and ancillary services such as: Public E-Procurement; Services Directive; Business processes automation; E-ID cards infrastructure. We have now therefore a new landscape and though there were failures in the past, it doesn't mean that the situation would repeat itself in the future. The Commission therefore concluded that we need to strengthen the Single Market, increase the level of convenience in accessing that market as well as increase trust online. So when developing our policies, we need to address all actors involved, develop legal certainty because without legal certainty, there is no point, operative costs must be low and it must work at a global level.

The European Commission was very pleased to see 2 Resolutions adopted by the EP which called for an ambitious development of EU e-signature systems echoing the intention of the Commission to also propose an ambitious policy. At the level of the EU, the proposal to revise the e-signature Directive and to address mutual recognition of e-ID was introduced in the Digital Agenda for Europe, reiterated by the European Government Action Plan 2011-15 and the Single Market Act, and emphasised by Mr Barroso in the Strategy for Stability and Growth in Europe. So this put the Commission under pressure. A public consultation was launched early 2011. The objective was to gather stakeholders' views on the existing situation and potential solutions (closed on 15 April 2011). The over all picture was based on 434 contributions with contrasting views and opinions on the use of E-Signatures and how to overcome problems. There will now be a proposal for a better interoperability of e-signature and of ancillary services to ensure that E-Signatures is what people and businesses want to use. The new proposal on electronic identification, authentication and signature aims to cover (to be confirmed):

- Mutual recognition and acceptance of e-identification across borders
- E-Signature interoperability and usability
- Cross-border dimension of related ancillary trusted services and credentials:
  - time stamping,
  - signature long term validation,
  - e-seals,
  - registered documents e-delivery,
  - e-documents,
  - website authentication

**This is all about building trust.** There are key principles such as data protection, liability as well as technological neutrality which are essential to ensure take-up.

Standards are also essential especially to establish the conditions for presumption of compliance of a given technical solution to the requirements of the legislation.

Mr Gábor Bartha indicated that, for example, a black list of enterprises can be set up in a

Member State in the area of E-Procurement, but this cannot be used across borders due to legal and technical barriers. Technical barriers can be overcome, but the legal barriers need to be addressed by the **Mutual Recognition Principle**. There will neither be an obligation to set up a national E-ID scheme and nor will there be an obligation to modify this E-ID. **The underlying working principle is mutual recognition and acceptance of E-IDs notified by the Member States to the Commission.** No member state would charge for validating an E-ID as it would be contrary to the mutual recognition principle. The private sector can also use E-ID and be part of this process. Other forms of E-IDs will, in the meantime, also remain legally valid.

The next steps include:

- A new legislative proposal by the second quarter of 2012
- E-signature standards rationalisation

**6. *E-Signature, What's in it for businesses?* by Mr. Vincent TILMAN, Senior Advisor European Affairs of EUROCHAMBRES. Managing Director of ChamberSign aisbl.**

Mr Vincent Tilman opened his presentation by highlighting that E-Signature is not more complicated than a pin and password. One can plug and play from a USB stick the software and introduce the password, so it's quite simple. However there is an issue with ADOBE and Apple which do not make it easy for users to have trust in this system. One can sign using mobile phones and other hardware solutions. In fact in the Member States, E-Signatures are already being used at a significant level and just in the banking system; one finds over 1 billion signatures a day.

There are 2 type of applications where E-Signatures are used: E-Government (taxes online; online business regimes; e-procurement; state and funding programs; customs documents; exchange of formal documents (environment) and E-Business applications (E-Invoicing, E-Banking, secure email exchange, E-Signature of documents, storage and encryption (E-Archive), privilege management (secure cloud computing, access to IT networks.....).

Since the publication of the current E-Signature Directive 1999/93/EC, the market is more mature and registers fast pace growth in:

- Critical mass of equipped SMEs
- Critical mass of developed applications.

There is a strong body of legislation adopted in the EU but implementation fails to deliver benefits at cross-border level. Guidelines on service provision of certification-providers is necessary as well as the integration of the 'trust list'.

**Third Meeting of the Second Period of Sessions of the IMCO Working Group on E-Commerce,**

**Thursday, 22nd of March 2012**

**From 10:00 to 12:30, European Parliament, Brussels**

**Meeting room: JAN 4Q1**

1. Adoption of the draft agenda.
2. Welcome and presentation of the Members of the Working Group and participants, by the coordinator **Mr. Pablo Arias Echeverría MEP**.

Mr Arias Echeverria welcomed the participants and opened the meeting by introducing the New reform Package on Data Protection that the European Commission had very recently launched which bears huge implications that it has on E-Commerce. Topics such as the right to be forgotten, the harmonization of the data protection laws at a European level, the explicit consent to storage personal data, the mandatory notification of violations of the personal data, the right to present complains to the national authority -even in the case that the data are processed in another country-, the use of the cookies, and many others, will produce a very significant change in the current legal scenario for data protection in Europe. Mr Arias then introduced in turn each of the speakers and how each would tackle in turn the various issues at stake inherent to data protection in the internal market and which are the key factors needed to ensure growth.

3. Opening statement, by **Mr. Malcolm Harbour MEP**, Chairman of IMCO Committee.

Mr Harbour explained that legal certainty and consistency are paramount for effective work in this area especially for companies who will now have a single point of contact as proposed in this draft regulation. In the e-Privacy Directive (2002/58/EC) data breach notification is actually an integral part of this directive and it's not a new concept brought in by this recently published reform package. Is the discourse hinting that the e-Privacy Directive is also out of date? When the data privacy directive was prepared there were many concerns about the relationship with cookies. People, who like to carry out on-line transactions, may actually wish to keep some data in the system - however this may differ from person to person. Informed consent is very important, but how often will informed consent be needed? How can we also ensure an informed choice available for people also for the controls and checks to be used? Consumers may wish to give up data as long as they feel they are in control of the data they are giving up - this also has implications for the settings of browsers. We must have one set of consistent set of measures across all the internal market and accountability is essential as only on the basis of reliable information could effective remedies be ensured. Mr Harbour feels that the proposed legislation as it stands is potentially bureaucratic and costly considering we have already e-Privacy rules in place already.

4. ***The New Reform Package on Data Protection***, by Ms. Marie-Hélène Boulanger, Head of Unit, Unit C3 - Data protection, DG Justice, European Commission.

Ms Boulanger opened her presentation by reminding that data protection is a fundamental right and we need to increase trust as this would help us benefit better from the on-line environment. New technologies which were there already in 1995 need to be updated and we need a new approach as now we have data flows in many directions. With the new treaty, we have new possibilities to adopt rules on the basis of Art 16 TFEU. There are though still problems especially for businesses on the operation of rights. We have at present 27 different systems - this is not clear enough. Fragmentation and lack of legal certainty were primary concerns in all the consultation carried out prior to adoption of this new reform package. Inconsistent enforcement in the member states needs also to be overcome. The commission now has the possibility to intervene if there is a problem of the internal market as this was not possible. Nowadays, individuals are more in control of processing their own personal data. The directive on the other hand deals with policing and data protection. The regulation ensures the harmonisation of rights while ensuring the free flow of information. It aims to cut red tape. Notification is replaced by an obligation to demonstrate accountability as well as better control on transfer of data to third countries. Less red tape and less administration is accompanied by better enforcement. Better information to consumers and consent will increase trust. For basic activities though there is no need for consent. Data breach notification based on practices in the telecom sector will enable better remedies. Ms Boulanger said that the proposed package is consistent with the data privacy directive. On the definition of personal data - this is based on the definition of the current directive and this did not change. Fair processing and proportionality need to be borne in mind when processing data. The Commission is in the process of organising a conference in the US on a code of conduct which is in line with the proposed legislation to remain consistent as we need clarity.

5. ***The EDPS-point of view on the reform package for data protection***, by Mr. Hielke Hijmans, Head of Unit, Policy and Consultations, European Data Protection Supervisor.

Mr Hijmans said that the Commission took the right approach in being ambitious and we need to do something urgently as, with technological development, we need to find new ways for accountability on internet. Also the current situation is not workable for E-Commerce and a one-stop-shop is called for. Trust and fundamental rights protection are key. Article 16 of TFEU should be available everywhere. We need to ensure the transferability of data, have data breaches, and ensure the right to be forgotten and adapt the legislation to the new challenges in data protection e.g. cloud computing. Harmonisation of rules here is key and same law must apply in the whole EU and the one-stop-shop would ensure that the same law applies. The regulation is best instrument to go further in this 'borderless' environment. Transparency in rules is essential and the right to be forgotten and data security of operations are essential. Data breaches will be checked by controllers but operators will also need to be vigilant. The shift from a notification regime to an accountability approach is one of the most important changes

proposed by this package. We need to ensure legal certainty in all member states. The consequences of this regulation on cloud computing need also to be assessed. A clarification of the existing laws to ensure binding rules especially for data transfer is called for. The definition of the scope of personal data needs to be examined as we need a definition which is applicable even in a number of years.

**6. *Towards a Privacy Enhancing e-Commerce*, by Ms. Marisa Jiménez, European Privacy Policy Counsel, Google Europe.**

Ms Jiménez explained that the way in which the new legislation needs to be implemented needs to protect individuals' rights on the one hand while, on the other hand, allowing the growth of the internet as the internet makes a crucial contribution to the economy. 21% GDP growth comes from internet and the internet is just not driving growth solely in the digital world but also brings about growth in the offline world. The reform package is a technical piece of legislation but it is ambitious. The positive elements include strengthening the single market aspects both internal and external dimensions. Google welcomes the proposed international transfers and the tone seems to have changed from the past as now the policy makers seem to have accepted such transfers as part of today's reality. The rules are eminently pan-European and additional requirements cannot be added on an *ad hoc* basis by Member states. There is a body of EU law outside privacy and the right to data portability is welcomed. However regarding how online information is treated needs perhaps to be thought through further - what does 'indirectly identifiable' mean? Profiling cannot be applied in the same way across all sectors. If we push too much towards systematic authentication this could block the use of internet as it becomes cumbersome. There are other means perhaps by which data privacy can be ensured as well.

**7. *The impact of social networks on the e-commerce eco-system and the need for a coherent and stable data protection regime*, by Ms. Melina Violari, Policy&Privacy Manager, Facebook.**

Ms Violari focussed more on the situation of 'start-ups'. She stated that innovation is crucial to boost employment. A study found that Facebook contributes significantly to Europe's economy and there are games with 14 million users which employ staff worldwide. Time-line applications and Spotify enable people to share music they like as well as experiences, generate a significant employment of staff to manage these programmes. A hotel in an island in Greece could also 'add friends' with people who have been there and this would attract other Facebook friends to go there as their friends had been there - so it helps businesses to grow due to information exchanged on social networks. Companies should be accountable to both their users and their regulators. The right to be forgotten should be about deleting one's own data, as deleting data that others post about someone else, including in blogs, could limit freedom of expression. Privacy by default versus privacy by design needs to be considered. The challenge nowadays is how to promote trust and accountability while ensuring free access to internet. The new currency in today's world for 'free services' is data.

8. ***The impact of the DP revision on e-commerce and online advertising***, by **Mr. Kimon Zorbas**, Vice President IAB Europe.

Mr Zorbas opened his presentation by pointing out that advertising in E-Commerce is in itself a true e-commerce transaction. In 2010 the turnover was 17,7 billion euros in Europe and these create services for people in Europe. Big Data is already here and this represents a huge potential for increase in productivity and savings for public sector, industry and consumers. By 2018, the USA will face shortage of 140 – 190,000 data analysts. For Europe the challenge is that USA might absorb talent, being a more attractive market. Data collection and analysis is a huge chance for Europe's public sector. It represents savings of: 150-300 bn €; operational efficiency savings: 15-20% = 120-200bn €; reductions of costs of fraud and errors: 1-3% of transfer payments = 7-30bn €; increase in tax revenue collection: tax gap 5-10% = 25-110bn €. There is though a lack of clarity between the proposed package and its relationship with E-Privacy Directive. The Current Art. 89.1: excludes E-Privacy Directive "obligations". How does this correlate with users' rights? There are also legal questions regarding the relationship between the directive and the regulation in this proposed package. The definition of "personal data" needs also to be addressed as all data is now personal... (Art. 4 (1) and 4 (2)): cookies, IP addresses, chipsets,... even if no one ever intends to identify an individual! Also, there seems to be no incentive to use pseudonymous data (approach has proven to be workable in Germany). Such a rule should be introduced. Self-regulation is also very important. It is included to an extent in the regulation, but we need to make it more meaningful as explicit consent (Art. 4 (8)) would very likely harm particularly European business. The main challenge in Europe that companies mostly SMEs; markets are very fragmented. European companies mostly B2B (but using consumer data), unlikely to receive explicit consent, as no brand relation to consumers exists. The right-to-be-forgotten and erasure (Art. 17): good but too wide and non-pragmatic. Already by deleting cookies one is forgotten (~50% of all users don't accept or delete cookies at least once a month!). On Profiling (Art. 20), this implies a de facto prohibition of to date legal activities. It is too wide in the way it's presented and seems to encapsulate most internet activities. Also terminology is not sufficiently clear (e.g. "significantly affect"). On lawfulness of processing, this does not include publishers' legitimate interests to analyze where users come from and what they are looking after (i.e. allowing better monetization). There is also a possible imbalance of consent & processing (Art. 7.4). A major change of contractual freedom to contract (e.g. fundamental right under German constitution) needs to be assessed as well as the potential administrative burdens: Red tape (documentation obligations) and privacy Impact Assessment etc. particularly impacting SMEs (question whether threshold of 250 employees is appropriate).

9. ***Preserving privacy in the Web maze***, by **Ms. Nuria Rodríguez**, Senior Legal Officer BEUC, The European Consumer Organisation.

Ms Rodriguez pointed out that consumers are not realising that personal data is being used as a currency and when privacy of personal data is a fundamental right. It is urgent that some order is put. This proposal perhaps comes a bit late as technology has developed and been around for a while. What are the main issues that consumers welcome from this proposal? The principals of legal processing have been maintained

and about the right to rectify personal data this is clarified more in the proposal as till now this was not clear. The right to be forgotten will be an element which drives competition and the right to data portability. Profiling is appreciated by consumers and it was not regulated before. Regarding impact assessment - this is an obligation. Through these impact assessments, consumers will understand the complexity and risks of data transfer. Balance is crucial here between the needs of the market and the right of the individual. When speaking about trust, we need a framework where consumers are allowed the choice as this would enable businesses to flourish. There has not been a case yet where self-regulation promoted at the same time equally fundamental rights.

**10. *The Data Protection review: key elements for growth in e-commerce* by Ms. Susanne Czech** EMOTA Secretary General.

Ms Czech explained that data is essential as it allows traders to consumers with meaningful offers. Also traders have an interest in consumers which come back and in developing new products and services. Before sharing precise concerns, let's speak about global concerns: the current fragmentation and enforcement of rules is a concern to traders and if the new rules are too rigid and inflexible, they may not adapt fast enough to the emerging needs of the digital single market. Lawfulness of processing is a concern. The rule on processing of personal data of children, this should be addressed through proper education and awareness. The 24 hour deadline to assess that there has been a data breach is very tight and 24 hours to becoming 'aware' leaves too much room for interpretation. Data protection impact assessment (Art. 33) are exaggerated costs if mandatory impact assessment for basic operations. Sanctions (Art.79): very high and harsh fines may possibly be imposed.

**11. *The Commission's Proposed Data Protection Regulation: an overview and selected issues*, by Mr. Christopher Kuner**, Layer Partner Hunton & Williams, Expert on Data Protection.

Mr Kuner referred to his article which was distributed in the meeting. The current provisions of Directive 95/46/EC have a negative effect on E-Commerce. We need to create a true internal market in data protection. As has been said, these proposed measures should harmonise the law in this field on a large-scale. What is 'main establishment' meant in the proposal considering that many companies have decentralised structures. This proposal allows citizens to implement their rights better on a cross-border basis. What is appropriate for the EU as a whole by way of a data protection standard should be assessed in its own right. What works for one specific member state may not be appropriate for a pan-European level. We need greater detailed explanations of how the proposed measures will work in practice especially in moving to a European conception from a national thinking.

**Fourth Meeting of the Second Period of Sessions of the IMCO Working Group on E-Commerce,  
Wednesday, 11th of April 2012  
From 10:00. to 12:30, Brussels  
Meeting room: ASP 1E1**

**1. Welcome and presentation of the Members of the Working Group and participants by the Coordinator of the Working Group, by Mr. Pablo Arias Echeverría MEP.**

Mr Arias welcomed the participants to the 4th meeting of the Working Group and introduced the agenda explaining how the speakers will compliment each other. Before passing the floor to the speakers, he highlighted the importance of the series of measures on and related to e-commerce published by the European Commission since 11 January 2012.

**2. The \$4.2 trillion opportunity : Sizing the EU economy.** Presentation of the new study by Boston Consulting Group on the Internet Economy in the G-20. By **Mr. David Dean**, Senior Partner and Managing Director, The Boston Consulting Group.

Mr Dean explained that the Internet today is ubiquitous. The new internet is different from the past and there will be 1 billion more users. The mobile use of internet is becoming more current. The internet of today is generating more income than before and it's a significant contributor to GDP.

3 main topics were discussed:

- Boston Consulting Group (BCG) intensity index
- E-commerce
- SMEs

BCG intensity index: In the vertical score 5 country clusters emerge: there is a group of countries (native countries which play a very significant role *vis-à-vis* the internet); the players who have an average use and then, the laggards who are still under using the internet's potential. By 2016 there will be 5.3% of GDP growth rate. The emerging markets in the G20 are growing particularly strongly.

E-Commerce across the G20 has a high share of retail. In the UK in 2010, e-commerce represented 20% of retail. The UK is the e-commerce capital of the world.

ROPO (research online purchase offline) is growing significantly and that added to e-commerce we find a very significant contribution to retail. Consumers value that internet's value is 8-10 times more than what it actually costs. There is a cost also of data protection.

SMEs. Is the internet actually causing jobs to be created or not? High web companies are growing significantly faster. Those that are not using so much the internet are shrinking significantly. Looking at retail, retail will change strongly over the next 5 years and anyone in retail/e-commerce needs to think critically on how retail will change to adapt to the potential of new technologies and to bring about the necessary improvements.

3. ***European Cross-Border E-Commerce: The challenge of achieving profitable growth***, by **Mr. Dennis Kredler**, Director General, European Retail Round Table (ERRT).

ERRT has a turnover of 20 billion euros. All the stores involved in ERRT have e-commerce operations. E-commerce opens up the possibility of multi-channel retailing even domestically plus it is an enabler of cross-border retail activity. E-commerce can bring the European market closer to the European consumer. Setting up E-commerce operations brings about retail and organisation questions. A multi-level channel requires significant investment in IT infrastructure. The in-store processes to handle online orders and product returns (these are 40% higher than in physical retail). There are also a number of obstacles: the cost of building brand awareness and the small scale of some markets. There are barriers to market entry and obstacles to selling and returning electronic equipment ( as a representative needs to be physically present in each country to sell and receive these goods); national labelling requirement; there are different product return laws ( this could be addressed by the consumer rights directive as long as national rules do not create incompatibilities) and there is a risk of having to reimburse the product before it is ensured that it is returned in a good state. All relevant new single market legislation should be submitted to an e-commerce test. There is also a need to devise the removal of obstacles at the theoretical phase of e-commerce as otherwise this could infer on market entry; it would be good to have a database to develop compliance with e-commerce projects. E-commerce is very closely linked to physical retail and we need to see how internal market legislation impacts on e-commerce and retail; and we need to see how the developments in retail market impacts on growth and jobs in Europe.

4. ***Retailers and e-commerce: the challenges ahead***, by **Mr. Graham Wynn**, Chair of the EuroCommerce Internal Market and Consumer Affairs Committee

Retail market developments and e-commerce should be an exciting prospect. Policy-makers seem to make it more complex for cross-border e-commerce. Also other obstacles arise. In the UK, retailers show an increased confidence and security, ease of comparing products and prices, trust of retailers as well as cheaper prices due to increased competition. The legal regime is essentially the same across the whole EU; however, entrepreneurs are reacting to consumers' preferences and experience of offline sales which have been transferred to online sales. Growth comes from a successful consumer experience: Confidence in the product, trader and product choice; confidence that the product will be delivered; and, confidence that if something goes wrong it will be put right. Delivery and postal services need to be rapid and reliable. Differences between online and offline systems need to be kept to a minimum particularly when it comes to consumer protection. The unintended costs from other legislation, VAT rules, different technical standards, bans on advance payments; installation problems that retailers in one member state do not have the same facilities as retailers in other states, etc, all inhibit at times online sales. The full implementation on internal market rules is crucial. Measures that help domestic growth will also help online growth. One must start by looking at what the consumers in the 21st century actually need. Effective, comprehensive and clear labeling could help boost consumer confidence. Outcomes are far more important than processes. Should redress be needed, an effective ODR system is required. All but a handful of disputes are actually resolved out of court and the time periods conceded to ADR can be too short to resolve them effectively as some matters are quite complex. An online test for future directives would be good. It is possible to boost up online sales by working in a fair,

stable and proportional retail environment.

5. *Towards a better business environment for European cross-border e-commerce*, by **Mrs. Susanne Czech**, Secretary General, EMOTA.

What makes cross-border e-commerce different from local sales? It requires costly tailoring to local conditions/consumer demands/ customer expectations. Cross-border delivery is an issue especially due to the higher cost implications, unknown quality of delivery services abroad; returns policies, as well as the differing VAT rates applied between Member States. The EU e-payments environment is largely fragmented. There is a wide diversity of payment methods between Member States and these need adaptation to local expectations; there is a lack of choice, high cost and security issues in payments matters. Also, cultural and linguistic diversification in Europe cannot be overcome by rules. Developments need to be monitored on the delivery markets and interventions need to take place where necessary; VAT differences need to be addressed; The fragmented payment landscape needs to be overcome while innovation needs to be encouraged. The legal patchwork of EU rules (consumer rules, data protection, copyright levies across Europe...) needs to be constantly monitored.

6. *How to enable retailers to succeed in the competitive online market*, by **Mr. John Andrews**, Director of IMRG

E-commerce in the UK is an established part of society and businesses and increasingly, more and more consumers are connected to the internet cloud. The reality is more a case of reacting to the multi-channel internet possibilities. The younger generation who is raised in a digital world, expects the same conditions as in their own country for anything in the 'cloud'. E-commerce needs to be recognised as part of changes in consumer behaviour. E-commerce is now becoming part of retail and not part of something separate. Retailing is ultra-competitive and very short term. The emergence of brands, with their international distribution rules and territorial pricing (having a different price for same product being, for example, 1000\$, 1000 Euros, 1000 pounds) is no longer possible with internet as prices can now be compared and different prices for same product is no longer accepted. Brands are not transparent enough. We need an effective Trustmark. The interest of business needs to be addressed as well as that of consumers. With digitalisation, various legislations could be involved in one single transaction. One major change is the meaning of the 'high street' shop. E-commerce must be seen as part of retail. We need to remove existing barriers and as consumers can buy globally, we need to see them as actors in a global context. This needs to be developed in parallel to other measures such as the Trustmark to ensure consumer confidence.

7. *A European model contract for online b to c contracts*, by **Mrs. Ursula Pahl**, Deputy Director General, BEUC

The proposed European Model Contract is a soft law approach which is self or co-regulatory. It needs to be endorsed by consumer and business organizations; and it is an instrument that will not replace national law but increases legal certainty and consumer confidence for cross-border sales transactions and is linked to a Trustmark. Ideally this should be linked to an online dispute solution.

The main problems in e-commerce are lack of delivery or defective goods. Distance selling

(e-commerce) is covered by 2011 CRD; delivery, passing of risk is covered by 2011 CRD; legal guarantees are covered by 1999 consumer sales directive and unfair contract terms is covered by 1993 unfair contract terms directive. The contracts to be covered include: sales contracts of movable goods sold at a distance (main focus: e-commerce), cross-border contracts, as well as contracts for domestic cases.

It should be a truly optional instrument which enhances consumer trust and it should be a ready to use product. The EMC should be put in place very quickly and needs to be based on the CRD.

- Business could gain through easy problem solving mechanism; linked to the ODR system, as:
- Link to the ODR system will solve the most frequent consumer complaints
- The application of Model contract implies trader's agreement to go to the ODR.
- ODR will be based on the Model Contract insofar as the questions in dispute are covered by it. Questions not covered (eg. prescription periods, compensation for defective products and similar ones) must follow the ordinary procedures
- The outcome – settlement agreement if accepted by parties

BEUC proposes 14 points to be included in the EMC structure and which are based on the CRD which cover the main elements of a distance selling B2C contract:

- Contract information
- Contract formation/ordering
- Availability and Delivery
- Substitution
- Right of withdrawal
- Risk
- Price and Payment
- Good not conforming to the contract
- Remedies for non-conformity
- After-sales services
- Additional Guarantees
- Complaint handling
- Dispute Resolution
- Choice of Law and Relationship with national law

Open questions regard the European Model Contracts remain on: Structural aspects, Financing and the Trustmark approach.

**Fifth Meeting of the Second Period of Sessions of the IMCO Working Group on E-Commerce,**  
**Wednesday, 16th of May 2012**  
**From 15:00 to 17:30, Brussels**  
**Meeting room: ASP 5G2**

**1. Welcome and presentation of the Members of the Working Group and participants by the Coordinator of the Working Group, Mr. Pablo Arias Echeverría MEP.**

Mr Arias Echeverría welcomed all the participants and explained that at this 5th meeting of the Working Group the role of e-commerce as a means to an exit from the crisis and the role of SMEs will be examined. Many opportunities are offered to SMEs especially for employment for young people. In G8 economies it is seen that companies who have developed their internet economy have gone much further than those who didn't. SMEs need more information, support and innovation. We need to get rid of legal barriers, increase the options of sales online and make training available to SMEs on ICT. In Europe business is founded on SMEs. If every SME could create one job today, than the unemployment crises could be solved.

**2. Opening statement by Mr. Malcolm Harbour MEP, Chairman of IMCO Committee.**

Issues of Digital Single Market are very high on the political agenda. Mr Van Rompuy has recently written to all Member States asking them to make progress on matters including the Internal Market. The work of the working group reaches out to the debates underway also in the Member States. He explained that public procurement and pre-competitive procurement could be used to develop new solutions to ensure greater accessibility to people in all aspects of life. Development and interoperability of ICT is also of key importance as well as transparency of standards including of e-accessibility which would enable persons with disability to access procurement.

**3. European SMEs and the Digital Single Market, by Mr. Michel Catinat, Head of Unit, DG Enterprise and Industry, Special Envoy for SMEs.**

SMEs are the groove of job creation in Europe. They provide 85% of jobs and amount to 99% plus of companies in Europe. To improve the business environment, the Commissioner would like to speed up the Small Business Act. The information technology developments are impressive. 8% of the GDP is accounted by SME activity. Internet has changed the global SMEs landscape and SMEs, across all sectors grew exponentially when they went online. Smart use of information and innovation are crucial to improve the framework conditions for SMEs. The digital single market is a key lever to the Single Market Act. There is a lot of work ahead. Three initiatives deserve a special mention:

- promoting SMEs in global industrial value chains and enabling SME to become more competitive offering SMEs better access to the global markets;

- e-Skills need to be developed. The e-skills manifesto would enable the achievement of this objective.
- The Commission will further strengthen the current financial instruments in Horizon 2020 to expand further venture markets in the EU.

The Commission is thinking of a strategy to boost entrepreneurship in Europe to enable SMEs to make a real 'leap forward'. The Digital Single Market is a crucial tool to help SMEs do this.

**4. European State aid policy and SMEs: recent and future developments**, by **Dr. Adinda Sinnaeve**, Deputy Head of Unit DG COMP/A3 State Aid Policy and Scrutiny, European Commission.

In the architecture of State Aid rules, we have the de minimis where no State aid is present. Then the General Block exemption where there is an automatic compatibility.<sup>1</sup> Then there are guidelines for general assessment and finally at the top of the pyramid - detailed assessment. All aid instruments are available to SMEs and many of them come under the General block exemption. The SGEI package adopted on 20 December 2011 include the recent developments which can compensate companies involved in public services. A communication has been adopted which explains the basic concepts of State aid. Simplification was especially requested for local services and also for network industries. A new de minimis has been introduced for 500000€ for 3 years which does not request any breakdown of expenses and this is a big simplification brought about by the SGEI. In social services, compensation is simplified as well as the turnover threshold. All one needs is to notify one's objectives. The framework is only applicable to those companies with a turnover of more than 15 million Euros per year or who have been found to be non-compliant. There is no threshold for all social services. The duration of entrustment is up to 10 years except if justified by longer depreciation period of assets; safe harbour for reasonable profit as well as a multi-annual approach to check overcompensation. The Commissioner on Competition has announced on 8th May a modernisation of State aid rules. We need more growth and therefore fiscal consolidation and an efficient use of resources, minimising distortions.

Three goals are defined to this end:

- fostering growth and strengthening the internal market;
- focus enforcement on cases which benefit the internal market;
- streamlining of procedural rules such as treatment of complaints and to clarify rules on treatment of aid to enable a faster growth

The objective is to have the main elements of the package adopted by 2013.

The agenda for the Modernisation of State aid rules is as follows:

- 8 May 2012: Communication on the Modernisation of the State aid rules (objectives)

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<sup>1</sup> Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty that under certain conditions aid to small and medium-sized enterprises ("SMEs"), aid in favour of research and development, aid in favour of environmental protection, employment and training aid, and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid is compatible with the common market and not subject to the notification requirement of Article 88 (3) of the Treaty.

- 2012 and 2013: Process of revision of existing instruments and preparation of new initiatives (entry into force 01/01/2014)

➤ A package of interrelated measures that should result in a clearer, more efficient and more coherent architecture

**5. Making the Digital Single Market Accessible for all: Overcoming barriers for disabled citizens**, by **Mrs. Bárbara Martín**, Director, Office of European Affairs, ONCE, and **Mr. Eugenio Perez Pecharroman**, Director Research and Development, CIDAT, ONCE.

Accessibility is of fundamental importance to ensure people with disabilities and lack of it could be the worst type of barrier. There are 75 million persons with disabilities in Europe and these persons should also have full access to the internal market. The digital age has helped enable access to persons with disability. There is still however poor thinking in developing accessibility to information. Open access and accessibility need to be borne in mind from the moment of inception of services in e-commerce. Three important points are especially relevant:

- E-commerce in business
- Social commerce (having access to comparative information through social networks)
- Mobile commerce as many more persons are using tablets and smart phones.

In having access to these services is available on a web portal. The obstacles to accessibility could be multifarious. Even simply images devoid of context or pages which depend on a certain use of the mouse, etc, all could be barriers to accessibility. The use of text boxes without proper labelling, all could be difficult especially for blind persons. There are solutions such as international standards which if employed well, would eliminate all barriers. In filling in forms, internet development companies need to be aware of type of barriers they need to address.

E-Commerce is: a growing field of interest with direct impact on daily life and, therefore, some sectors of the population should not be excluded from it.

#### **6. Final remarks:**

DG INFSO is developing action at three levels:

- Practical programmes for improving accessibility in mainstream web;
- Legislation
- Standardisation of services.

There is currently a revision underway of the public procurement directive which can help innovation and DG Justice is working on a European accessibility act.

Accessibility for all needs also to be taken into consideration in all standard making.

**Sixth Meeting of the Second Period of Sessions of the IMCO Working Group on E-Commerce,**  
**Wednesday, 6th of June 2012**  
**From 16:00 to 17:30, Brussels**  
**Meeting room: ASP 5G2**

1. Welcome and presentation of the Members of the Working Group and participants by the Coordinator of the Working Group, **Mr. Pablo Arias Echeverría MEP.**

Mr Arias welcomed all the participants and congratulated the two Commissioners on the excellent work that they are carrying out towards the achievement of the Digital Single Market. Measures, including, amongst others, the Single Market Act, the Digital Agenda, Intellectual Property Rights Enforcement, Consumer Agenda, Data Protection have all been translated into concrete actions. He welcomed the recent e-procurement and e-signatures initiatives and said that all these provisions have been examined in detail in the preparation of the draft report on Completing the Digital Single Market as well as within the E-Commerce Working Group. The Digital market is the key to regenerating the economy in Europe, bring about growth and creating jobs. However having 27 disparate Digital Markets instead of a Single one is a big cost today especially for SMEs. They need to be given access to the digital economy, to innovation and to R&D. There are 23 million SMEs in the EU and if each of them created one more job, that would solve the crisis. Commissioner Michel Barnier as well as Vice-President and Commissioner Neelie Kroes have contributed with a number of important actions which were discussed in IMCO. We have to promote confidence in the Single Market to ensure that Europe becomes a level-playing actor on the global stage. The exit from this crisis will be in Digital format and we have 2 years to achieve this.

2. **Intervention by Mrs. Neelie Kroes, Vice-President of the European Commission, Commissioner for Digital Agenda in Europe.**

The online world is a major driver of growth and innovation and we are just at the start. However the Digital Single Market is far from achieving its full potential. Everyday consumers and companies are faced with certain barriers amongst which one finds particularly a lack of trust and a lack of interoperability - obstacles which are not present in the offline world. Three elements are central to the development of the Digital Single Market: connectivity, trust and good online content. The proposed Connecting Europe Facility would allow millions of Europeans to connect to internet. There is always scope for improvement and for better accessibility. Many countries will introduce e-IDs as well as certified website authentication which are part of the measures underway to ensure trust. Cross border online services mean that businesses across borders will have a facilitated access to cross-border commerce. Online Trustmark schemes need to be recognised by businesses and consumers for them to be effective. Moreover, users need to feel safe online, children, in particular, increasingly use the internet and need to be protected online. Other elements to be considered are cloud computing and mobile

payments. Cloud computing has a huge potential as it will simplify service provision and offers the possibility to create the Single Market online. E-commerce is linked to payment and payments are being increasingly mobile. Next week will be held in the EP (under the auspices of ITRE) the second Digital Agenda Assembly on 21-22 June 2012.

### **3. Intervention by Mr. Michel Barnier, Commissioner for Internal Market and Services.**

The Digital Single Market and e-commerce are complex matters and it is a big challenge for Europe to move across boundaries. The Digital economy uses immaterial tools and this is different from how the Commission has operated in the past. We need to get rid of a huge number of obstacles. We need to grow by 20% in GDP in the next few years and that would be through a Digital Economy. The challenge is how to unleash the potential of e-commerce and e-services. It is unacceptable that only 3% of retail sales are made online. If 15 % of retail sales were e-commerce and the obstacles to the internal market were removed, the gains for consumers might be as much as EUR 204 billion, or 1.7 % of European GDP. There are 2 objectives in the action plan: By 2015 online trade and services should double and should account for more than 20% of growth and net job creation in some Member States. On the other hand, on online payments, the picture is quite discouraging and the market is very fragmented, therefore the operators are called to innovate. In July there will be the results of the consultation on online payments, delivery and security. A number of SMEs mention customs issues and delivery costs.

Discrimination in online trading is another problem. Citizens are discriminated on basis of disability, especially in the case of visually impaired persons, of residence and/or nationality. Article 20(2) of the Services directive prohibits such discrimination. On Friday 8th June 2012, a new package on the implementation of the services directive for local services has been launched to ensure that discrimination on internet is abolished. The 'services package' is the set of actions that the Commission is proposing to stimulate growth in the services sector.

Some other issues include also reconciliation between internet and copyright laws and IPR. These latter 2 sets of rules need to be updated. Orphan works and collective management of copyright need a clear legal framework too. Legal cross-border music services are for the moment very expensive. We need to reduce costs while protecting copyright. The Digital Revolution in public procurement is very important as we pass more and more towards a non-material world. The EU needs to make the transition successfully and this requires considerable ambition. Thanks to the 12 SMA levers and the 12th one which was just launched (e-Signatures and e-Procurement) billions of Euros will be saved in Europe. Online gaming and gambling will be the topic of another action plan next September.

### **4. Exchange of views with the Members of the WG.**

Mr Harbour emphasized how important it is to reach out to people who still haven't bought into the Digital Single Market as yet. He called for a kind of 'lock-in' between public procurement and e-signatures and offered the example of Cyprus which aims to move to 100% e-procurement.

Mr Correia de Campos, enquired about the impact of the financial crisis on e-commerce. He underlined the link between youth employment and the development of e-commerce. The differences in VAT rates in Europe today are also another obstacle to e-commerce and their harmonization would reap benefits for e-commerce, even though the 'new' rate maybe higher than then the previous one for some countries.

Mrs Corazza Bildt pointed out that E-commerce is complementary and not in competition with online sales. She called for an "e-commerce test" to be carried out verifying whether new measures are creating new barriers to e-commerce. She also pointed out that the EU patent is urgently needed and welcomed the aim to protect children online. She wondered though if this can be achieved by self-regulation. She also enquired as to how standardization will be implemented in e-commerce and the Digital Single Market.

Mrs. Thun, pointed out that in Krakow last year, people complained about the cost of postal services as these are calculated from border to border and not in real distance terms.

## 5. Next meeting

The next meeting will take place on 28th June, from 10h00 - 12H30 in Room JAN6Q2. The studies ordered in 2012 by IMCO on the various issues related to e-commerce and online services will be presented on that occasion.

The agenda for the next meeting includes:

Welcome and presentation of the Members of the Working Group and participants by the Coordinator of the Working Group, **Mr. Pablo Arias Echeverría MEP**.

### **PANEL 1 : OVERCOMING BARRIERS FOR CONSUMERS & BUSINESS IN E- COMMERCE**

- 10.00-10.15 Presentation of the study on a pan-European Trustmark for e-commerce (Mr Neva Nahtigal, Mr Jan Trzaskowski, Dr Frank Alleweldt, Civic Consulting)
- 10.15-10.30 Presentation of the study on reforming the Data Protection package (Prof. Hans Schulte-Nölke, University of Osnabrück)
- 10.30-10.45 Presentation of the study on simplification and modernising of VAT in e-commerce (Mr. Sigurd Naess-Schmidt, Copenhagen Economics)
- 10.45- 11.15 Exchange of views

### **PANEL 2 : INTERNET EVERYWHERE, ANYTIME AND ON ANY DEVICE**

- 11.15-11.30 Presentation of the study on Cloud Computing (Ms Anna Fielder, Civic Consulting)
- 11.30-11.45 Presentation of the briefing paper on State-of-Art internet connectivity and its impact on e-commerce (Mr. Scott Marcus, WIK Consult)

11.45-12.00 Presentation on the Digital Agenda : which are the next goals,  
short-term, medium-term and long-term ?  
(Mr. Franck Boissière, European Commission, DG INFSO)

12.00-12.30 Exchange of views

The studies and briefing paper are managed by Policy Department A Economic and Scientific  
Policy on behalf of the IMCO Committee.

**Seventh Meeting of the Second Period of Sessions of the IMCO Working Group on E-Commerce,  
Thursday, 28 June 2012  
From 10.00 a.m. to 12.30 p.m., Brussels  
Meeting room: József Antall 6Q2**

Welcome and presentation of the Members of the Working Group and participants took place by **Mrs Rosa von Thun und Hohenstein** who replaced for this session, **the Coordinator of the Working Group, Mr Arias Echeverria**, who due to serious personal circumstances could not travel to Brussels for the purpose of this meeting.

**PANEL 1: OVERCOMING BARRIERS FOR CONSUMERS & BUSINESS IN  
E- COMMERCE**

**10.00-10.15 Presentation of the study on a pan-European Trustmark for E-commerce (Mr Neva Nahtigal, Mr Jan Trzaskowski, Dr Frank Alleweldt, Civic Consulting)**

**There is a lack of trust and this is one of the key impediments to e-commerce. An effective Trustmarks would encourage trust.** Main concerns include delivery, returns, product replacement/repair, personal data, etc. In a 2011 consumer market study, only 12% of consumers reported no concerns about shopping online from another EU country? There are different possibilities for trust-building, including advertising, Trustmarks, objective-source ratings, and partnerships, in particular, there are differences between small traders and those with strong brand recognition; the latter have less or no need to support their trustworthiness with additional cues such as Trustmarks.

**A Trustmark is intended to be displayed as e-labels, to signal adherence to a set of rules (code of conduct) and increase confidence in the online trader.** A defining characteristic is the involvement of a third party, including certification (even though this is currently not a prerequisite for the legal operation of a Trustmark). Trustmarks are not currently available in all Member States. Available Trustmarks provide different levels of guarantees / protection to consumers. While findings on their effects are inconclusive, awareness is a critical success factor but is currently rather low (this may be improving). Diversity among Trustmarks can be found on the following grounds: formal accreditation (not available in all MS); nature of administering organisation(s); funding; stakeholder involvement; scope of coverage; enforcement (monitoring and sanctions), etc

Potential advantages of an EU Trustmark are dependent upon its design; they could include: Support for SMEs; Enhanced cross-border coordination of Trustmarks and exchange of best practices; Overcoming language barriers; Increased legal certainty; Increased credibility of accredited Trustmarks; Broad cross-border recognition among consumers; increases in online shopping trust / cross-border trade.

Potential disadvantages of an EU Trustmark are also dependent upon its design and could include: The cost of administering the Trustmark; Administrative burden for businesses; Potential confusion among consumers; Interference with existing Trustmarks; Difficulty ensuring consistency across the EU; Gaps in coverage in case of an accreditation scheme for existing Trustmarks; Trustmarks and their models can be freely started and determined.

There is no EU legislation directly regulating Trustmarks, but there is a comprehensive set of rules protecting consumers in e-commerce. Primary relevant instrument for the use of Trustmarks is that regarding commercial communication directed at consumers (especially the 2005 UCPD). **A Trustmark is likely to be perceived as a guarantee by a consumer and therefore must guarantee**

**something that is not prescribed by law.** UCPD Annex I, item 10 states that it is a misleading commercial practice to present rights given to consumers by law as a distinctive feature of the trader's offer; Certification, monitoring, enforcement, etc. by a third party intrinsically entail beyond-the-law consumer benefits, as would any in-case-of-problems guarantee

There are **5 distinct policy options for introducing an EU Trustmark:**

1. No intervention whereby over time, the market may offer effective structures. Commitment has already been made by the Digital Agenda item 17.
2. Encouraging/facilitating self-regulation whereby we possibly co-fund the stakeholder collaboration, focus on procedural aspects of Trustmark and substantive aspects of codes of conduct. The feasibility depends on financial commitment by business community;
3. Co-regulation - this could be done by Recommendation and provide a set of a voluntary requirements for Trustmarks in e-commerce comparable to the EC recommendation on ADR. It would be preferable to build on good practices.
4. Accreditation Scheme which requires more EU involvement
5. Certification scheme - This is the most far-reaching solution from an EU perspective. The trustmark would be awarded following an audit based on the scope of coverage of the trustmark and a respective set of requirements (code of conduct). It would require an organisation equipped and competent to run the certification process. A mechanism for stakeholder participation would be an important element and it further imply a considerable financial challenge entailing investment to launch the trustmark and ensure its sustainability.

#### **10.15-10.30 Presentation of the study on reforming the Data Protection package (Prof. Hans Schulte-Nölke, University of Osnabrück)**

New technologies and services with impact on data protection include: Geo-location services; face recognition; profiling, in particular unifying data protection policies for different services in order to compile overarching profiles for each user. There are various new challenges for data protection legislation

- Concept of "personal data"
- Anonymisation and pseudonymisation of data
- Purpose limitation principle
- Profiling

New trends in profiling which combines data from different sources, combining information from different source which gives great opportunities to e-commerce but could bear important implications for personal data. The concept of personal data needs to be reconsidered. There is more anonymisation and pseudonymisation of data. We must have more purpose limitation defined - this is a main principal of data protection law. At times the data maybe still there, but the purpose may have changed. Can the user use the old data under new purpose? The new regulation allows this, especially in profiling and this is usually to the benefit of the data subject.

The extra-territorial application of the new application is a new aspect and it's an enormous progress as this puts under the same the regime all data processors dealing with all European data, so we'll have uniformity of practice. The question still to be solved is enforcement on extra-EU territory. The purpose of using regulation instead of directive is to iron out national peculiarities.

The innovative aspects of the regulation include:

- Accountability instead of notification
- Extra-territorial application
- EU-wide level playing field

- One-stop-shop for enforcement

New aspects with respect to the rights of consumers and enforcement with respect to the directive 95/46/EC include:

- Right to be forgotten and to erasure
- Right to data portability
- Rights against “profiling”, in particular the exclusion for children
- Duty of controllers not established in the Union to designate representatives
- Joined operations of supervisory authorities

Tools at hand include decisions on the adequacy of data protection legal systems of non-EU countries: model contractual clauses and binding corporate rules. However, progress still needs to be made on model contractual clauses: processor-to-sub-processors model clauses; binding corporate rules: lessen the burden, especially for the benefit of SMEs; and, accreditation systems for non-EU cloud providers who voluntarily agree to adhere to EU data protection requirements

**10.30-10.45 Presentation of the study on simplification and modernising of VAT in E-commerce (Mr. Sigurd Naess-Schmidt, Copenhagen Economics, Mr. Sigurd Naess-Schmidt, Copenhagen Economics; Mr Johan Van der Paal, Mr Kenneth Vyncke and Ms Nathalie Wittock, Deloitte).**

The study is divided in 3 main sections: Trends in e-commerce; shortcomings, policy options.

E-commerce is split in 2 parts:

- Distant selling: dispatch of physical goods
- Digital services: dispatch of bits

**E-commerce is a growing issue and any related VAT issue will become increasingly important.** Sales growth rates for the digital parts have exceeded traditional dispatch of physical goods by a wide margin over the last 5-6 years and this trend is expected to continue. This implies that VAT rules for digital services become steadily more important.

Internet purchases tend to be concentrated on leisure “goods” such as travel, entertainment and cultural goods and services. These goods: Travel well (do not perish); are well defined (brand, standardised content); and are often based on international common denominators (music, ICT equipment or software).

For physical goods the destination rules applies if annual sales exceeds threshold defined in national tax law and if origin country is unknown. For export outside EU, VAT is zero rated. For imports from outside EU to non-taxable persons: what applies is the country of import (unless low value consignment relief).

**For digital services, country of supply is:** a) country of origin until 2015; and, country of destination from 2015. Exports to non-taxable persons outside EU are zero rated while imports from outside EU to non-taxable persons depend on country of destination (already in force).

**Shortcomings of the present vat system in digital single market:**

- Standard rates: there is a minimum 15 per cent in principle for goods and services. The option of reduced rates can only to be applied on agreed set of goods and services and includes:
  - Labour intensive services and food (not really relevant for e-commerce)
  - Printed media (books, newspapers and periodicals)
  - Reception of broadcasting services (tv and radio)
- *Do specifically not include digital services*

- Diverging tax treatment of certain price elements :
  - postal services, payment intermediaries can be taxed or exempt.

Essentially three drivers of VAT rate induced distortions: Customers choice of source country (go for the country with lowest VAT for any given product or service); Customers choice of product, lower rates for physical versions gives a systematic bias; Supply chain issues, such as: Exemptions for universal service suppliers and financial services in practice distorts competition for supplier not being favoured with such exemptions; and, in the study there is outlined a number of examples from real life where this present problems.

The current directive sets minimum rate at 15 % allowing for some exceptions such as physical books to have reduced rates. Between countries there are differences in VAT rates for physical goods dominant in E-commerce also substantial. Actual rates span typically the whole area from standard rates to as low as zero per cent. In principal this is not a problem: For physical goods the destination principle applies but requires effective enforcement. Two countries apply reduced rates to E-books! Until 2015, “shipments” to other country continue at the original rates. Also when a consumer is in another country, the authorities also need to determine whether the person is taxable or not.

In December 2011 a Commission communication which reviewed the VAT rate structure by defining which rate to apply for a given good/service. The communication pushed for a more standardised rate to avoid distortion of internal market. This was based on 3 principles to prevent impediments to achieving other objectives and even out differences between digital and physical goods by looking at the use of of reduced rates when there is:

- An obstacle to the functioning of Single Market
- Impediment to the functioning of other community policies (health, environment etc.)
- A distortion to consumer choice by providing unequal treatment for similar goods and services

**The implication for e-commerce is that the use of different VAT rates for digital and physical variants obvious example of all three principles violated.**

The Commission therefore proposes to:

- move towards more standard rating across the board removing the option of reduced rates for books etc.
- Can be combined with more targeted national public support for cultural services

Other options include:

- Reduced rates for digital services also
  - Removing reduced rates for physical books may prove more difficult than providing options for reduced rates for digital services
  - Common but lower rates for both physical and digital product variants is less conflicting with the three principles than the status quo
  - Applying destination rules to supplies to EU consumers from non-EU countries is going to be an uphill struggle
  - Example:
    - There is not even “destination” principle for inter-state supplies in EU, should the US then start to implement enforce such rules only for the benefit of EU tax authorities
    - What about other less developed tax authorities
- Reversing the bias

- Allow reduced rates on digital services only arguable less distorting and more protective of national revenues than present model

## PANEL 2: INTERNET EVERYWHERE, ANYTIME AND ON ANY DEVICE

### 11.15-11.30 Presentation of the study on Cloud Computing (Ms Anna Fielder, Civic Consulting)

The economic impact of cloud computing is significant: the North American based providers make up 56% of market, while EU cloud computing is growing. What is the potential economic impact: that's quite considerable as there would be fewer data centres for large organisation; there will be cost savings and increased competitiveness of IT services available to public and private organisations; information is more accessible / interactive for consumers with cost savings.

Between 1996, IBM decreased their centres from 96 to 12. There are different types of cloud: public, private, hybrid and community clouds. Different types of services: Software as a Service (SaaS), Platform as a Service (PaaS) and infrastructure as a Service (IaaS).

Cloud can be located anywhere in the world and in several places at once with significant policy implications. Some EU data stays in Europe due to protection of personal and sensitive data.

#### Potential benefits for consumers:

- Services free (monetize personal data)
- Access from anywhere
- Lower computer costs
- Better access to and sharing of information
- Automatic maintenance and updating
- Potentially better security

#### Potential benefits for businesses

Same as consumers, but also

- Avoiding capital expenditure for IT
- Scaling IT resources
- Better project collaboration and project management
- Design of custom applications by SMEs

#### Potential benefits for governments

Same as businesses

- Better government services for citizens, thanks to
  - Competition between suppliers
  - Ability to rapidly trial new systems
  - Lower barriers to entry for SMEs

#### Many risks and policy challenges

Barriers to take-up, and to single market :

- Data security: (Loss of confidentiality and integrity of data; Loss of IT control; Data interception; Provider massive failure; Risk-based approaches to address vulnerabilities: Different levels of security; Private or community clouds; Audit and certification system of cloud services);

- Privacy and data protection: (Cloud –specific issues include: Role of the cloud provider (controller or processor?); Applicability of EU laws; International data transfers; Law enforcement access to personal data; Providers have different thresholds of disclosure (contracts); Seen as both a risk and an opportunity (for EU clouds);
- Market fragmentation (jurisdictions): (‘Balkanisation’ of the cloud; Complexities of many jurisdictions and many applicable laws; “...*the legal regime was unclear according to our public questionnaire in 90% of cases. Basically all people say it is an issue....all groups say they don’t know what to apply*”); Gaps in relevant laws when applied to the cloud);
- Problems with contracts;
- Provider lock-in (no interoperability, no standards)

**11.30-11.45 Presentation of the briefing paper on State-of-Art internet connectivity and its impact on e-commerce (Mr. Scott Marcus, WIK Consult)**

**The evolution of wireless Internet data (especially LTE and Wifi offload) brought about a growth of mobile data which offers opportunities to Europeans:**

- As a means of providing consumers with ubiquitous IP-based access to data and applications anytime, anywhere, whether moving or stationary.
- As a means of achieving ubiquitous broadband coverage, even to remote or hard-to-reach areas, and thus achieving the objectives of the Digital Agenda for Europe in a technologically neutral way.
- As an alternative to fixed high speed broadband access, even in areas of moderate density, subject to constraints of capacity and demand.

Mobile data is growing in use quite rapidly, 48% by Smartphones, 24% by laptops and 10% by tablets. Mobile broadband will be used for a wide range of applications. As there is an explosion in traffic there is an explosion in technology and for bandwidth available. Typical realistically achievable speeds are less, but still impressive. Gains come from use greater spectral efficiency through use of multiple antennae (MIMO), and from more spectrum.

These changes bring also important effects as infrastructure becomes more cost effective over time. The devices cost less over time and more mobile devices are using classic applications, however a degree of re-design is needed at times for mobile devices. There is a range of applications which offer a number of benefits. More applications will be available by means of mobile data. An increasing fraction of those applications will be important for commerce, health, or safety of life or property.

- E-health (M-health): remote examinations and remote monitoring can reduce the number of doctor and hospital visits. If E-health services were restricted to the patient’s own home, the freedom of movement for patients tends to become restricted as well.
- Mobility and Intelligent Transport Systems. Intelligent Transport Systems, applications promise to be more efficient, safer and more environmentally friendly.
- Remote collaboration. In remote (or “virtual”) collaboration, people work together on a task or project without being in the same office. This can save travel time and can also lead to higher productivity.

Some services are especially helpful when one is travelling such as: navigation applications such as maps with pointer to municipalities, local facilities and services; Global data roaming needs to be more accessible as it is particularly important, even more when one is travelling.

The revised Roaming Regulation has been especially important as it brings about a substantial reduction in the retail price for roaming data to €0,20 per MB in 2014). Wifi has been a very effective solution, but it depends on its availability. Roaming could be easier in an LTE world - but there are divergent views as VoIP is not so compatible as yet with handsets. The question to be put is: would the regulation really solve the problem of insufficient accessibility to data? Lowering the price though is certainly a good first step.

**11.45-12.00 Presentation on the Digital Agenda: which are the next goals, short-term, medium-term and long-term? (Mr. Franck Boissière, European Commission, DG INFSO)**

Although the main objectives of the Digital Agenda remain relevant, two thirds of the actions will be completed by the end of 2012, so a review is called for. The Digital Agenda Assembly (DAA) contributed towards this review. More than 1100 persons had registered for the DAA. The review will result in a Communication from the Commission giving a stock-taking of all the actions and need for new action or further work on current actions, etc.; a Staff working document; a Status of actions; and a Summary of online discussions. Further feedback from online discussions and Digital Agenda Assembly will also be provided online.

The Communication aims to provide:

- Setting the scene: growth, jobs and ICT
  - Digital single market
- Draft orientations
  - European borderless economy
  - Trust and security
  - Fast Internet
  - Innovation
  - Entrepreneurship, jobs
  - Public digital goods
- Governance
- Conclusions

The final goal is setting up a global economy as in the digital world there are no borders, so we need to overcome barriers which derive from the physical world. Horizon 2020 will start to operate very soon as this enable more innovation and we can deliver more to citizens. We need to facilitate the access to the Digital Single Market and creation of jobs for SMEs. Digital services would give us a lot of benefits for Europe. Another element to be proposed is on Governance: The recent appointment of Digital Champions in Each Member State to engage for actors locally to deliver on the actions of the Digital Agenda. On 26th June there was a meeting of these Digital Champions: they will continue to capitalise in social media to enable a bigger outreach to people in this exercise of the Digital agenda.

The studies and briefing paper are managed by Policy Department A Economic and Scientific Policy on behalf of the IMCO Committee.