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on completing the internal market for e-commerce
(2010/2012(INI))

Committee on the Internal Market and Consumer Protection

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on completing the internal market for e-commerce (2010/2012(INI))

The European Parliament,

- having regard to the ECJ judgments on Google (Joined Cases C-236/08 to C-238/08, judgment of 23 March 2010) and BergSpechte (Case C-278/08, judgment of 25 March 2010) that define the notion of the 'normally informed and reasonably attentive internet user' as the standard internet consumer,
- having regard to its resolution of 9 March 2010 on consumer protection,¹
- having regard to SOLVIT's 2008 annual report on the development and performance of the SOLVIT network (SEC(2009)0142), the Commission staff working paper of 8 May 2008 on an action plan on an integrated approach for providing single market assistance services to citizens and business (SEC(2008)1882) and Parliament's resolution of 9 March 2010 on SOLVIT²,
- having regard to the Commission communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth' (COM(2010)2020),
- having regard to Commission staff working document of 3 December 2009 entitled 'Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices' (SEC(2009)1666),
- having regard to the Commission communication of 22 October 2009 on cross-border business to consumer e-commerce in the EU (COM(2009)0557),
- having regard to the 'Mystery shopping evaluation of cross-border e-commerce in the EU', a study conducted on behalf of the European Commission, DG SANCO, by YouGovPsychonomics and published on 20 October 2009,
- having regard to the Commission staff working document of 22 September 2009 on the follow up in retail financial services to the Consumer Markets Scoreboard (SEC(2009)1251),
- having regard to the Commission communication of 7 July 2009 on a harmonised methodology for classifying and reporting consumer complaints and enquiries (COM(2009)0346) and to the accompanying draft Commission recommendation (SEC(2009)0949),
- having regard to the Commission communication of 2 July 2009 on the enforcement of the consumer acquis (COM(2009)0330),

¹ Texts adopted of that date, P7_TA(2010)0046.

² Texts adopted of that date, P7_TA-PROV(2010)0047.

- having regard to the Commission report of 2 July 2009 on the application of Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (COM(2009)0336),
- having regard to the Commission staff working document of 5 March 2009 entitled 'Report on cross-border e-commerce in the EU' SEC(2009)0283,
- having regard to its resolution of 5 February 2009 on international trade and the internet,¹
- having regard to the Commission communication of 28 January 2009 entitled 'Monitoring consumer outcomes in the single market: Second edition of the Consumer Markets Scoreboard' (COM(2009)0025) and to the accompanying Commission staff working document entitled 'Second Consumer Markets Scoreboard' (SEC(2009)0076),
- having regard to its resolution of 21 June 2007 on consumer confidence in the digital environment²,
- having regard to Article 20(2) of Directive 2006/123/EC³ of 12 December 2006 on services in the internal market,
- having regard to Directive 2006/114/EC⁴ of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version),
- having regard to its resolutions of 23 March 2006 on European contract law and the revision of the acquis: the way forward⁵ and of 7 September 2006 on European contract law⁶,
- having regard to current Community legislation in the area of consumer protection, e-commerce and the development of the information society,
- having regard to the Commission communication on the Review of the EU Regulatory Framework for electronic communications networks and services (COM(2006)0334),
- having regard to the First Application Report of 21 November 2003 on the E-Commerce Directive (COM(2003)0702),
- having regard to Directive 2002/65/EC⁷ of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC,
- having regard to the UNCITRAL Model Law on electronic commerce 1996, the

¹ OJ C 67E, 18.3.2010, p. 112.

² OJ C 146E, 12.6.2008, p.370.

³ OJ L 376, 27.12.2006, p. 36.

⁴ OJ L 376, 27/12/2006, p. 21.

⁵ OJ C 292 E, 1.12.2006, p. 109.

⁶ OJ C 305E, 14.12.2006, p.247.

⁷ OJ L 271/16, 9.10.2002,

UNCITRAL Model Law on electronic signatures 2001 and the UNCITRAL Convention on the Use of Electronic Communications in International Contracting 2005¹,

- having regard to Article 11 TFEU, which stipulates that ‘environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development’,
 - having regard to Article 12 TFEU, which stipulates that ‘consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities’,
 - having regard to Article 14 TFEU and Protocol 26 thereto on services of general (economic) interest,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0000/2010),
- A. whereas Europe should not only seek ways to complete the internal market for e-commerce but also look into how the internal market could be completed by e-commerce,
 - B. whereas e-commerce is a vital force of the internet and an important catalyst for achieving the aims of the EU 2020 strategy for the internal market; whereas it is important for all stakeholders to cooperate to overcome remaining barriers,
 - C. whereas it is crucial to achieve an effective functioning of the internal market to fulfil the Lisbon agenda goals of increasing growth, employment and competition to serve the 500 million consumers in the EU,
 - D. whereas the Second Application Report on the E-Commerce Directive has been overdue since 2005, i.e. for five years (Article 21 of Directive 2000/31/EC),
 - E. whereas European consumer and business confidence in the digital environment is low and whereas in certain aspects of e-commerce Europe is lagging behind the United States and Asia,
 - F. whereas the fragmentation of part of the electronic market within the EU endangers the rights laid down in the *acquis communautaire*,
 - G. whereas European consumers and businesses have little legal certainty as regards cross-border e-commerce and one single electronic transaction is subject to many legal provisions setting divergent requirements, which does not provide either business operators or consumers with clear and easily enforceable rules,
 - H. whereas the increasing cross-border dimension of consumer markets brings new challenges to enforcement authorities, which are constrained by jurisdictional boundaries and the fragmentation of the regulatory framework,
 - I. whereas e-commerce users have a right to compensation when they are affected by illegal

¹ <http://www.un.or.at/unictral>

practices, but in practice they face substantial barriers in bringing such cases to court due to high costs, long and complex procedures and the risks associated with litigation, particularly in cross-border cases,

- J. whereas, despite the potential of alternative dispute resolution, such systems are regularly used by only 5 % of retailers, and 40 % of retailers do not know about the possibilities of using these tools,
- K. whereas uniformising the most essential consumer rights, as well as postal and banking costs, copyright levies, VAT procedures and data protection practices would go a long way towards creating a genuine single market for businesses and consumers,
- L. whereas e-commerce encourages the development of an ecological single market through the use of low-carbon and environmental technologies, standards, labels, products and services,

Introduction

- 1. Welcomes the Commission communication of 22 October 2009 on cross-border business to consumer e-commerce in the EU;
- 2. Calls on the Commission to harmonise all the definitions in this field, while acknowledging the hard work already done in areas relevant to e-commerce;
- 3. Stresses the need for an active policy to enable citizens and businesses to benefit fully from the internal market, which offers good quality goods and services at competitive prices; considers that this is all the more essential in the current economic crisis as a means of fighting against growing inequalities and protecting vulnerable consumers, low-income groups and small and medium-sized businesses;

Counteracting fragmentation of the on-line internal market

- 4. Calls for standardisation of pre-contractual information in e-commerce, while retaining a minimum harmonisation approach for face-to-face contracts in specific sectors, such as health services or estate agents;
- 5. Calls for uniformisation of specific rules and practices to allow distance traders and direct sellers to move beyond their national borders in the guarantees and liability offered;
- 6. Calls on the Commission and the Member States to propose measures and reach agreements respectively with a view to simplifying and streamlining VAT reporting obligations for cross-border e-commerce;
- 7. Stresses the need to simplify and streamline measures on electric and electronic waste, cross-border management of copyright levies on blank media and recording devices, and EU rules governing cross-border electronic invoicing ('e-invoicing') for distance selling;
- 8. Calls on the Commission and the Member States to ensure the effective implementation of Article 20(2) of the Services Directive, and calls on the Commission to propose a

provision for access to products delivered cross-border, in line with that article of the directive;

Completing the Internal Market by e-commerce

9. Calls for measures to be taken in order to contribute towards an increase in the number of internet users and the improvement of the quality, price and speed of the net in those countries and regions within the Union that do not have a good-quality connection;
10. Calls on the Commission to begin formulating European standards to facilitate cross-border e-commerce, to bridge variations between the laws in force within the various Member States and to remove the obligation of having an off-line shop prior to selling on-line, as both prevent consumers and small and medium-sized enterprises from fully exploiting the internal market's potential in the electronic environment;
11. Stresses the need to review rules on exclusive and selective distribution in order to reduce barriers to online sales;
12. Emphasises the need to make the e-commerce supply chain more transparent so that the consumer always knows the identity of the supplier and whether the supplier is an intermediary or an end supplier;
13. Calls on the Commission to establish the requirement for entrepreneurs who voluntarily use standardised contracts and standardised general commercial terms and conditions to highlight those provisions which differ therefrom;
14. Calls on the Commission to extend the rules governing distance contracts so as also to cover contracts concluded between consumers and professional traders in online auctions and contracts for tourist services (airline tickets, hotel accommodation, car rental, leisure time services and so on) ordered individually over the internet;
15. Calls on the Commission to clarify rules on soliciting (direct or indirect) using the internet in other Member States;

Enhancing users' legal protection in cross-border e-commerce

16. Calls for the introduction of a requirement that an external audit be carried out in respect of certain specific types of electronic services where there is a greater need to ensure that those services are fully secure, to protect personal information and data (in the case, for example, of internet banking);
17. Considers that enhancing market surveillance, transparency of rules and enforcement mechanisms to encourage users' confidence is crucial as consumer spending will be an important factor for the economic recovery; takes the view that public authorities must be given more resources to investigate and ultimately stop illegal commercial practices; calls on the Commission to create a European early-warning system, including a database, to combat fraudulent activities in the digital market; calls on the Commission to update RAPEX (rapid alert system) as necessary;

18. Calls for a harmonisation of the rules on unfair contract terms to establish a single EU-wide clause on unfairness so as to ensure that national authorities and courts follow the same standards when assessing contract clauses;
19. Calls for the establishment in all Member States of independent e-commerce users' protection agencies with full power to bring proceedings before national courts in order to protect the interests of producers and consumers;
20. Shares the Commission's view that alternative dispute resolution mechanisms (ADR), such as mediation and arbitration or out-of-court settlements, can be an expedient and attractive option for consumers; urges Member States to encourage the development of ADR and collective redress to enhance the level of consumer protection and maximise compliance with legislation; recalls the positive experiences of SOLVIT and of the network of European Consumer Centres; calls for the creation of a European e-consumer information system which would offer detailed guidance and information about rights and obligations in the digital market; but emphasises that such mechanisms should complement and not substitute judicial or administrative means of enforcement;
21. Stresses the need to develop and standardise rules offering a high level of legal protection to minors, and encourages the launching of information campaigns for parents, teachers and guardians to make them aware of their responsibility in educating children about risks on the use of on-line commerce and the importance of vigilance on children's use of the internet;
22. Emphasises the need for proper training and education of civil servants and judicial authorities as regards EU consumer protection rules;

An e-confidence strategy to raise e-commerce users' confidence

23. Calls for clearer and improved horizontal legal instruments and the harmonisation of certain aspects of consumer contract law; considers that this should include other directives, such as those on distance selling of financial services and e-commerce;
24. Believes that consumer confidence can be built up through European trusted authorities or trustmarks that guarantee the reliability and quality of goods placed on the cross-border electronic market; considers that a sustainable European trustmark needs to be established;
25. Calls for a grant programme to be established and for use to be made of existing financial instruments for projects to increase users' confidence in e-commerce, including educational and information campaigns and projects verifying online services in practice (such as 'mystery shopping'); emphasises the need to create an electronic learning module based on the Dolceta project (Development of On-Line Consumer Education Tools for Adults);
26. Calls on the Commission to develop an EU charter of users' rights in the area of online services and e-commerce, in line with the objectives of the EU 2020 strategy;

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27. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

Introduction

E-Commerce is a vital force of the internet and an important catalyst to achieving the aims of the EU 2020 strategy for the internal market. It is important for all stakeholders to cooperate to overcome remaining barriers.

The gaps of the Single Market become even more evident if we look at cross-border commerce. The free movement of goods in Europe is severely hindered by fragmented sets of national rules. Figures on the state of e-Commerce in the EU show that in 2009, one consumer out of three in Europe bought at least one item online, but only 7 percent of European consumers have dared to do so in another Member State. Covert research by the EU into e-commerce practices showed that 60% of customer attempts to buy items across EU borders fail, with the transaction or shipping declined by the vendor, even though the buyer could have saved at least 10% by e-shopping abroad (even including shipping costs) in half of the 11,000 cases investigated.

The now-ratified Lisbon Treaty, with its aim of streamlining the EU's political processes, should help attack such fragmentation.

In this time of economic crisis, it is more important than ever that Europe works hard and fast to overcome those barriers. The EU's Single Market boasts of more than 500 million consumers. But when one goes online and tries to shop, one wouldn't realize it. At the moment, the Single Market is letting consumers down, especially when they go online. Cross-border e-commerce is not developing as quickly as domestic e-commerce due to a number of pitfalls:

- Many websites only allow you to shop online with an off-line address in a certain country. One survey said that 61% of cross-border transactions cannot be completed because the online shops do not serve the consumer's country. Incentives need to be created for traders as well.
- Even though half of EU households have a high-speed internet connection, consumers' lack of confidence still holds them back from shopping online. Another survey showed that only 12% of EU web users **feel safe making transactions on the internet**. What's encouraging is that there is a strong desire to take advantage of the Single Market. A third of consumers would consider buying online from another country because it is cheaper or better. Sadly, only 7% actually do so. If we give consumers more confidence, we could unlock the full economic potential of Europe's single online market, worth more than €100 billion in revenues.
- **There is a lack of effective enforcement and redress** which are essential for markets to function well. There are major differences between Member States leaving consumers dissatisfied regarding problem-solving in cross-border e-commerce.

To boost the confidence of all operators in the e-Commerce market place, a rapid improvement of the implementation of European legislation for the benefit of all European consumers and retailers is called for. It is vital that European Union leaders and policy-makers look into the current regulatory framework on distribution agreements, trade mark rules, services and consumer provisions, to ensure they are fully up to date with the 21st

Century Market and promote both consumer and retailers benefits.

The main challenge today is to achieve a real single market online for Europe. This can only be done by adapting Europe's economy to the competitive 21st Century Global Market. A strong European market needs to be created that allows the EU to compete on the global market. Europe has to have a coherent set of rules that enforce both consumers and retailers confidence, achieving a European global leadership on digital economy. To this end, it is important that there is clear guidance to e-commerce users particularly in terms of the core characteristics of information disclosure and fair business practices that businesses should provide and consumers should expect in the context of electronic commerce.

It is important that a strong effort is made to promote e-commerce and encourage its users to be more confident by informing them about their rights and how to enforce them in the field of e-commerce.

The Commission and the national enforcement authorities need, therefore, to increase their efforts in order to attain the objective of achieving a high level of e-commerce users' protection and to furnish users with the confidence to exploit the single market to its full potential. Enhancing market surveillance and enforcement mechanisms to encourage producers' and consumers' confidence is essential for cross-border e-commerce. This, in turn, would lead to more consumer spending which will also be a crucial factor for the economic recovery.

Your Rapporteur welcomes the thirteen recommendations for action for developing policy and practice in the field of cross-border e-commerce identified by the Commission Communication. He would favour a more in-depth critical analysis on the possible way forward in the six priority action areas below which to his view are crucial for increasing and strengthening cross border e-commerce:

1. **User's access to the internet in Europe should be reinforced.** To be able to buy online, consumers need to obtain some sort of quality access to the web. Certain actions should be undertaken in order to contribute towards an increase of the number of internet users and towards the improvement of the quality and speed of the net in those countries and regions within the Union that do not have a good quality connection.
2. **The fragmentation of the online market needs to be overcome.** Many sellers create barriers to transnational markets as certain services are not available online for people from determined regions or countries from the Union. Sometimes this is due to the redirection of the consumers to their national webs when they detect an IP from another country, and sometimes it is simply because they refuse selling to consumers from certain specific countries. It is therefore necessary to reinforce the application of article 20 (2) of the Service Directive that prohibits the discrimination of the clients based upon issues regarding nationality or place of residence.
3. **The fragmentation of the rules of consumer protection needs to be overcome.** The application of the new directive on consumer rights will be a step forward not only

when signing contracts but also it could help overcome the problems that could arise between buyer and seller when submitting to the same regulation.

4. **It is necessary to increase consumer trust while shopping online.** Many consumers do not shop online because they do not trust the security of this market due to various reasons. Some may feel defenceless while buying from someone they cannot actually see, because they either feel these people can be deceptive or they can offer them a faulty product, a different product to the one they are being shown on their screens. To increase consumer's trust on the online market, certain actions need to be taken:
 - Creation and implementation of a European Trustmark.
 - Reinforce the vigilance and supervision of the web.
 - It is necessary to create informative campaigns through which consumers can learn about their rights, which elements a web needs to have in order to be able to trust it, which are the secure forms of payment etc.
 - Ensure consumer protection in the means of security and personal data protection. .

5. **Initiatives need to be developed in order to incentivise businessman to commercialize on the internet.** Many businesses do not commercialize on the internet due to the vast inconveniencies they would face if they did so. Certain rules, related to taxes, waste management etc, differ in excess from certain national markets to others, which brings a business surrounding for retailers that is complex, costly and unpredictable. This is why it is essential to adopt normative propositions that will incentivise retailers to promote this field of business, with the opportunities that will rise for consumers:
 - Simplify the VAT reporting obligations of distance sellers;
 - Improve the payment mechanisms used online;
 - Uniformise postal and banking costs across the EU;
 - Give practical solutions to problems related to payments and the rights of intellectual property, in a way that suppliers will not have to pay in different countries for the same goods;
 - Regulate at a European level the scale of publicity through Internet;
 - Improve the mechanisms to solve conflicts between supplier and consumer.

6. **Efforts need to be made to guarantee the security of under aged while using the web.** Effective mechanisms need to be regulated at European level to guarantee the protection of the under aged in terms of access to harmful content for them , including pornography, the purchase of tobacco or alcohol, bets on the internet, conversations with strangers and the use of social networks.

It is your Rapporteur's point of view is that this is all about implementing and adapting existing EU rules from off-line commerce to the market on-line, in order to achieve a real and complete European Single Market ready to face the challenges of the 21st Century Global Economy.