

Main priorities for the European Digital Commerce sector

2023

PRIORITY PAPER



After two years of accelerated structural transformation and digitalisation of the European economy, significantly pushed by the COVID-19 pandemic, the European Union has found itself at a new pivotal moment as it faces a war on its continent and a perfect storm of sky-high energy prices and disturbed global supply chains. Throughout these crises, the European Union and European institutions have shown the effectiveness of a common response, and their capacity to adapt and evolve to respond to new obstacles. Similarly, businesses in the EU have proved their resilience throughout the pandemic but face new challenges today that will further shape our sector.

Now more than ever, the digital commerce sector needs ambitious, future-proof legislation on which to build the future of the sector, while continuing to contribute to a green, digital, fair and competitive European economy. With only one year to go to achieve all the objectives that were set for this European Commission mandate, before the European parliamentary elections in 2024, cooperation among the industry, policymakers and civil society will be crucial.

With this paper, Ecommerce Europe wants to bring to the attention of EU policymakers the key principles for a regulatory framework fit for the future of retail, and share its views on sustainability, the platform economy, the use of data and other relevant priorities.

Key principles for a regulatory framework fit for the future

With the ultimate goal of creating a European framework fit for current and future challenges that will boost digital commerce in Europe, Ecommerce Europe's vision about the future of retail is driven by a set of horizontally applicable key principles that policymakers should take into account:

1. Channel neutrality

Online and offline channels should be treated equally from a regulatory perspective to ensure the further development of omnichannel solutions by companies. Sales channels are complementary and legislating on the assumption that they are in competition only creates further complexity for companies expanding across channels, experimenting with sustainable solutions, or trying to adapt to consumers' habits and expectations for seamless consumer experiences. Ecommerce Europe therefore advocates for channel neutrality in legislation as paramount for digital retailers to succeed.

2. Harmonisation

A harmonised Single Market is the foundation of our economy. 2022 marked the 30-year anniversary of the EU Single Market. While Ecommerce Europe recognises the important steps that have been taken over the years, we also see that businesses are still faced with significant barriers to cross-border selling. We believe that policymakers have a responsibility to reduce market fragmentation and remove red tape for cross-border business operations. This is the only way to generate economic growth, ensure compliance and ultimately provide the best consumer experience possible. Ecommerce Europe therefore advocates for more harmonised EU rules, which are fundamental to alleviate unnecessary regulatory burdens and create legal certainty for businesses and ultimately more consumer choice.

3. Enforcement

Enforcement of EU rules has proven to be challenging, as national authorities are often under-resourced, under-staffed and lack coordination, both between countries and between national competent authorities themselves. Consequently, companies that invest significantly in compliance are placed at a competitive disadvantage compared to those that do not comply with the rules. Ecommerce Europe therefore calls on the European Commission and EU Member States to boost and ensure effective and efficient enforcement of EU legislation.

4. Level playing field

E-commerce players active in the Union but based in non-EU countries should play by the same rules as EU-based businesses in order to avoid creating any unfair competition. Ecommerce Europe therefore advocates for a level playing field to ensure that EU-based businesses do not suffer from a competitive disadvantage vis-à-vis non-EU based players.

5. Adaptability

These days, the European digital commerce sector looks considerably different than it did ten years ago. New business models, using innovative technologies, focussing on circular supply chains, or adopting inventive company structures are no longer the exception, but are becoming the norm. Similarly, the distinction between online and offline channels is disappearing. The ultimate objective behind any piece of legislation can only be achieved if businesses are able to comply with the rules. Policymakers therefore need to step up their efforts to ensure EU legislation accurately reflects the diversity of the digital commerce sector. This means that rules need to be adaptable to various business models and that EU rules cannot impede innovation and growth.

6. SME-proofing

A key objective for regulators should be to ensure that existing and new legislation is accessible to all companies, including SMEs. In practice, this means rules should be designed, aligned and harmonised to ensure that all companies are able to understand and comply with them, regardless of their size. The multiplication of legislation, with many new sector-specific and horizontal rules can create important challenges for SMEs, especially considering the fragmentation of implementation. In the shorter-term, we strongly encourage the Commission to continue focussing on providing SMEs with educational support and reducing administrative burdens at EU and national level, in order to give them a fair chance to compete in a fast-paced global market. Considering the economic weight of SMEs in the European economy, while taking into account varying level of resources of these businesses, we strongly encourage policymakers to explore the role of capacity-building for SMEs and gradual timeline for implementation and compliance for new legislation.

7. Proportionality

While companies need clear rules to operate, it is also crucial to maintain room for innovation and growth. The European regulatory framework should be principle-based and regulate the objective that should be pursued, rather than the means and tools used to pursue them. It is crucial for policymakers to avoid creating prescriptive rules that could hamper businesses' ability to innovate and improve their operations. Furthermore, any new legislation should be carefully assessed to ensure its relevance and proportionality, to prioritise areas where rules need to be clarified and avoid creating new rules for objectives that could be addressed instead through further guidance and enforcement.

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Rules fit for the evolving retail landscape

- The digital transformation of businesses was accompanied by a digital transformation of consumers, bringing both opportunities and challenges with it. Businesses, whether online, offline or omnichannel, have a long-term interest in building trust by protecting customers. Next to being empowered by having extensive possibilities to compare which product fits their needs best, digitalisation and e-commerce also helped improve consumer protection by establishing a more direct line of communication between the retailer and the consumer. Ecommerce Europe believes that the **EU possesses a very complete and flexible legislative framework**, in which the existing EU consumer rules, complemented by other legislation, are capable of tackling the challenges brought about by the digital age.
- The concept of “**digital fairness**” became a keyword throughout the last few years. In 2023, the European Commission plans to take concrete steps in view of drawing up an overarching **Fitness Check of EU consumer law in the online world**, expected in Q2 2024. It is of paramount importance that the ongoing evaluation process builds upon a thorough assessment of the existing legislative framework, focussing on current shortcomings due to enforcement problems and lack of harmonisation. The outcome of the Fitness Check should reflect **channel-neutral policy making and create legal certainty**, thus fostering the creation of an enabling environment for businesses. It should also build on lessons learnt, as consumer policy in the EU is still too much a mosaic of different interpretations and transpositions of legislation. These **differences in implementation do not help businesses, which in the digital commerce sector are increasingly operating cross-border, but also do not help consumers** understand their rights in an already complex regulatory landscape, especially when shopping cross-border. This can also be identified in the highly fragmented set-up of the **Alternative Dispute Resolution (ADR) mechanism**. Which, besides being organised in different manners across Europe, are also very costly for retailers and trade associations. Ecommerce Europe urges the Commission to address these two fundamental limitations of the ADR process in its upcoming revision.
- Online platforms have become an important component of the digital commerce sector. Sellers choose to sell via an online marketplace to reach new customers, increase brand exposure, and reduce costs for SMEs that may not be able to maintain their own online store. Overall, marketplaces diversify the product offer to consumers and contribute to the competitiveness of European businesses. In 2022, European policymakers have adopted the **Digital Services Act** and **Digital Markets Act**, new legislation aimed at regulating digital platforms. Consequently, 2023 will be a crucial year for the **proper implementation of the rules** by the Commission and national authorities. It is therefore essential to streamline cooperation and information exchange between the EU and the Member States’ administrations.
- To address new challenges and opportunities brought by increased globalisation and digitalisation, policymakers are working on renewed **product safety and liability rules**. While it is important that these legislative instruments will be adjusted to the digital environment as well as to emerging technologies and new products, policymakers should be careful not to change the elements that are still functioning properly. Moreover, **any new rules should ensure feasibility in terms of compliance, favouring a risk-based and principle-based approach**. It is therefore important to establish a clear scope, legal certainty on definitions and a balanced allocation of responsibilities and liabilities on the various actors in the supply chain.

Innovative and data-driven economy

- As the retail industry is experiencing an accelerated digitalisation, the role of data is increasingly important. European policymakers are currently addressing concerns about privacy and data protection across many legislative files, such as content moderation rules, consumer law and regulations on new technologies. It becomes very important, therefore, to **carefully assess whether these concerns arise due to a legal gap or are caused by enforcement issues**.
- While 2022 was strongly marked by uncertainty concerning the flow of data for commercial purposes between the EU and the US, the timely start of technical negotiations in Q4 2022 suggests a more positive outlook for 2023. The adoption of a new adequacy decision for the US, the so-called Trans-Atlantic Data Privacy Framework, is tentatively slated for March 2023. The bilateral agreement should be balanced and aimed at **creating conditions for frictionless data transfers alongside drawing on strong privacy commitments and providing for mutual economic benefits** for businesses.
- **Work on the application of General Data Protection Regulation (GDPR) is ongoing**, through the Commission's Multistakeholder expert group and via guidelines prepared by the European Data Protection Board (EDPB). In particular, the EDPB should strive to improve transparency and to limit its guidelines to what is factually regulated by the GDPR. As the discussions on the e-Privacy Regulation go back as far as 2017 and are still ongoing, **digital retailers and consumers are left with an outdated EU privacy framework**. The key demands of the digital commerce sector remain important to stress to policymakers, in particular with regards to further processing, unsolicited communications and alignment with the GDPR.
- The digital transformation in retail goes beyond opening online sales channels. It extends into new techniques for optimising the use of data to generate insights to drive better business outcomes. Artificial Intelligence (AI) is increasingly being integrated in the retail landscape. From customising offers in real time, innovating the way consumers can digitally try on fashion items, to optimising inventory management, AI can help e-commerce companies better meet changing consumer demands. European policymakers are advancing with the negotiations on the proposal for an **Artificial Intelligence Act** to provide legal certainty and ensure that AI solutions used in the EU are safe and comply with EU law. With the finalisation of the AI Act expected in 2023, it will be crucial to **ensure that the scope and definitions are clear and that the rules are proportionate**.
- European policymakers have also set out to strengthen the European data economy through proposals such as the Data Governance Act and the **Data Act**. Ecommerce Europe recognises the untapped potential of data in the EU and agrees that there are opportunities for enhancing a competitive data market. However, in regulating the data economy and data-driven technologies, policymakers should ensure that the obligations **reflect the diversity of business models in the digital sector, protect trade secrets, and put limits on government access to company data**. Moreover, the rules should be feasible to adhere to and compliance should not be too burdensome, hamper innovation or the uptake of new technologies by retailers.

A fair and sustainable future for retail

- The European legislative framework has a key role in creating the right market conditions and signals for the rapid uptake of more sustainable products and services in the European Union. The **role of digitalisation as leverage to develop more sustainable practices and products** and the evolution towards cross-border, omnichannel commerce should be a key element of our transition to a circular economy. Digitalisation should be seen as an opportunity to **empower consumers** (in terms of access to information and to sustainable products and services) and **improve information sharing across the value chain**.
- The European Union has undertaken the task to adapt its regulatory framework to match this evolution. This year's proposals on **Ecodesign for Sustainable Products and Empowering consumers in the green transition** – expected to be adopted in 2023 – are a key example of that. To maximise the effectiveness of these proposals, responsibilities should be clearly allocated to the right player on the supply chain, and it should reflect today's new circular business models and complex supply chains - for example in the context of second-hand and refurbished products.
- Information on sustainability will be key. The two proposals address **information requirements and the flow of data** throughout the supply chain, as well as how this information can empower – down the line – consumers. The **Digital Product Passport** could play, in the long-term, a huge role in facilitating this flow of information and truly change the way we produce, consume and handle products. But then again, it will be crucial to ensure rules on responsibility for inputting information are clear. Finally, **ensuring that information and claims are verifiable, comparable and understandable across the EU** will be instrumental. The **Substantiating Green Claims** proposal is expected to fill some of the existing gaps in terms of a common understanding of green claims, and in terms of recognised methodologies.
- The ambition should be to create a **harmonised single market for sustainable products and services, but also for other key elements of the circular economy such as spare parts or waste**. We strongly encourage policymakers to aim for the highest level of harmonisation on the files mentioned above, to truly create opportunities for businesses to produce and sell sustainable products across borders. Moreover, we call for ambitious revisions of existing legislation. Through the revision of the **Waste Framework Directive in 2023**, the EU has the opportunity to create a real single market for waste intended for reuse, repair and recycling with the harmonisation of legislation and definition in the EU. We also encourage the Commission to use the **Right to Repair initiative** expected next year to support the development of a fully-fledged European market for repair services and for second-hand, repaired and refurbished products. Our priority should be ensuring better design, facilitating repair and access to spare parts, as well as ensuring the growth of both the repair services market and the second-hand and refurbished products markets in the EU.

A competitive and innovative European retail payment market

- **Data-driven innovation** must be leveraged to improve retail payments in the EU. Policymakers should use the **revision of the Payment Services Directive 2 and the future initiative on Open Finance** to assess the missing building blocks for the development of Open Banking in the EU. The overall success of PSD2 has been severely hampered by several factors, which have had a clear impact on innovation and the development of new added-value services from third-party providers that should have benefitted merchants and consumers. **The share of new payment services based on open banking remains low and these solutions have not reached a sufficient level of maturity to compete against established payment methods.** We, therefore, look forward to the Commission's assessment of the PSD2 and its possible revision.
- Building on the ambition of the PSD2, more efforts are needed to ensure that the EU payment market is **more competitive and transparent**. It is crucial to continue monitoring and discussing at EU level the evolution of the market and costs of payment, notably looking at the costs of card-based payments applied by international card schemes, and the impact on merchants and consumers.
- Merchants are rarely empowered to request further information and transparency on the services and the breakdown of their costs. When communicated, the breakdown of the merchant service charge often lacks clarity. But the question of transparency for merchants also goes beyond costs and can impact merchants' ability to control and improve the quality of services and in turn the experience of customers. **The EU regulatory framework could encourage their participation**, through concrete actions such as allowing merchants' data on customers to be used to authenticate transactions under SCA, and through **more structural reform on transparency and information flow** between actors of the payment supply chain.
- Finally, ensuring **fair access to future payment technologies**, for example, a Digital Euro, will require efforts to educate and involve a very wide number and variety of merchants across Europe.

Future-proof taxation framework

- Following the OECD agreement on the reform of the international tax system, the coming year will be crucial for how this will be organised at EU level. The European Commission is proposing legislative instruments to implement the OECD deal, which however are still going through lengthy discussions among the Member States. To overcome the current impasse in the Council of the EU, some Member States are considering the idea of proposing unilateral national legislative initiatives. **To avoid double taxation, it has become more important than ever for EU Member States to remove their national digital taxes and for the EU to not move forward with a separate EU digital levy.** The new taxation framework must be global and ensure a level playing field so that companies are taxed in a fair, non-discriminatory and channel-neutral way.
- The implementation of the VAT E-commerce Package needs to be monitored closely and remaining issues must be consistently addressed by the upcoming “VAT in the Digital Age” legislative initiative to ensure that the new framework reaches its full potential and truly facilitates cross-border commerce.
- The Single VAT ID is a crucial building block for the future of indirect taxation in the EU. Ecommerce Europe has been advocating for ensuring that the upcoming “VAT in the Digital Age” initiative will adopt the policy option of **extending the One Stop Shop to all pan-EU distance sales from storage located in different EU countries to the final consumer.** With this option in place, **the success of the VAT E-commerce Package to simplify VAT compliance and filing will concretise.**

Logistics fit for the future of commerce

- The internal market for postal services is an integral part of the Digital Single Market, providing an important channel for e-commerce delivery. Digital commerce has played an especially positive force for postal service providers, and Ecommerce Europe believes that the **postal channel will continue to be a valuable asset** for online merchants and their customers. At the same time, the current **postal regulatory framework may not be fully fit to address the issues that have arisen in recent years**. For this reason, the European Commission has launched an evaluation exercise of the Postal Services Directive (PSD), suggesting adapting it to the new market situation and the increased e-commerce flow. In response, the European Regulators Group for Postal Services has adopted a position paper calling for a complete revision of the PSD, followed by a Council decision asking the Commission to publish a study on the need and relevance for a partial or complete revision of the legislation. Ecommerce Europe will be closely involved in this process to advocate for **balanced and evidence-based rules in the interest of the wider e-commerce sector**.
- In its report on the application and implementation of the Cross-Border Parcel Regulation, the European Commission found that the Regulation has achieved its aims, but eventually more parallel initiatives could be taken to improve tariff transparency and regulatory oversight. Ecommerce Europe overall supports the **principle of transparency in the parcel delivery market**. However, any new initiative should be carefully assessed and evidence-based, to ensure that the interests of the e-commerce sector are taken into account. Furthermore, overall coherence with other ongoing initiatives, such as the implementation of the European Digital Agenda and the European Green Deal, should be prioritised.
- Building on the transition to a more digitalised system and data model, Ecommerce Europe believes it is crucial to support and streamline the **process of digitalisation of the Customs Union kickstarted by the EU** in order to ensure a seamless flow of goods into the Union, for instance by **simplifying border formalities** and setting up a **Single Window Environment for Customs**, which is fully supported by the European Parliament. Also, the new EU Customs Data Model will reflect the Universal Postal Union's Customs Data Model and the Electronic Advance Data system, which reflect the parallel work carried out in the European Standardisation Committee's (CEN) Technical Committee 331. Ecommerce Europe will be closely involved in this process, also thanks to its presence both at the EU and UPU level.



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