

How to Fully Reap the Benefits of the Internal Market for E-Commerce?

New economic opportunities and challenges for digital services 20 years after the adoption of the e-Commerce Directive



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Abstract

This paper provides a framework for maximising current and potential benefits of e-commerce for the single market while minimising economic and societal costs. It takes stock of the role of the e-Commerce Directive and analyses new challenges arising in the age of platforms. Forward-looking solutions are presented to enhance cross-border e-commerce in the EU, facilitate access to digital copyrighted content and improve the sustainability of online platforms. Finally, the paper reflects on the planned digital services act, outlining policy recommendations.

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LIST OF ABBREVIATIONS

AI	Artificial intelligence
BEPS	Base erosion and profit shifting
B2B	Business-to-business
CO₂	Carbon dioxide
Directive	Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')
DSA	Digital Services Act
EU	European Union
EU-27	The 27 European Union countries 2007-2013, prior to the accession of Croatia to the EU
EU-28	The 28 European Union countries before 1 February 2020
EUIPO	The European Union Intellectual Property Office
GDP	Gross Domestic Product
GO	Guarantee of origin
ICT	Information and communication technologies
IT	Italy
OECD	Organisation for Economic Co-operation and Development
PPA	Power purchase agreement
P2B	Platform to business
P2C	Platform to consumer
SMEs	Small and medium-sized enterprises
TFEU	Treaty on the Functioning of the European Union

TWh

Terawatt hours

UK

United Kingdom

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EXECUTIVE SUMMARY

Over the past 20 years, the growth of e-commerce has brought widespread benefits. Consumers can access more conveniently a wider choice of products and services, at lower prices. As such, e-commerce leads to welfare gains for EU consumers of between €34 billion and €204.5 billion per year (0.3–1.7% of EU-27 GDP) and increases household consumption, ultimately contributing to GDP growth. E-commerce bolsters trade, since new digital technologies underlying online exchanges effectively shrink the distances between consumers and suppliers and reduce trade costs compared with traditional commerce. The impact of distance on trade can be up to 65% smaller for transactions online compared with transactions carried out offline. E-commerce also facilitates the access of small and medium-sized enterprises (SMEs) to (new) markets and new consumer segments, by increasing the visibility of SMEs as well as by limiting upfront investments and operational costs.

While the benefits realised so far are clear, e-commerce has the potential to expand further and generate additional benefits for the internal market and EU consumers and businesses. The e-commerce sector is estimated to account for 8.8% of total retail sales in the EU, a growing share compared with previous years. Nevertheless, the share is still smaller compared with other markets. In the US, for instance, the share of online retail sales out of total retail sales was estimated at 16% in 2019. To fully reap additional benefits, a number of barriers still need to be removed in order to support the growth of e-commerce, and especially cross-border e-commerce in the EU. In fact, on the consumer side, 63% of individuals in the EU made at least one online purchase in 2019, but only 22% of individuals purchased online from another EU country; on the supply side, while 18% of enterprises in the EU were selling online in 2019, only 9% were selling to other EU countries.

Barriers to cross-border e-commerce, as reported by both consumers and businesses, include delivery and returns issues, difficulties in dealing with complaints, or restrictions to online sales established by commercial partners. In addition, a particular issue that e-commerce faces is the restrictions related to cross-border access to copyrighted content. Such barriers need to be addressed in order to tap into the full potential of e-commerce in the EU.

Yet, an enhanced EU framework for e-commerce in the internal market is not only about removing remaining barriers, but also about understanding how digital developments are shaping more and more of the EU economy. As e-commerce has expanded over the past 20 years, its nature has also changed radically, with online marketplaces such as Amazon, eBay and the Alibaba group playing an ever more important role as orchestrators of online purchases. The rise of online platforms has enhanced some of the benefits of e-commerce, especially by making it easier for consumers and sellers to come together online. As much as 60% of the private consumption and 30% of the public consumption of goods and services in the EU digital economy happens through online intermediaries. Moreover, the value of transactions going through digital platforms in Europe is forecast to grow significantly, by up to 35% year on year. Nonetheless, such a dynamic field is bound to raise several issues and associated costs across multiple areas, such as concentration of market power, illicit trade, environmental costs and taxation.

Against this background, maximising the benefits of e-commerce in particular in the age of platforms, while minimising its costs, is crucial. A forward-looking mix of actions needs to be considered in order to foster cross-border e-commerce, facilitate cross-border access to copyrighted content and improve the sustainability of digital platforms.

- First, ensuring the proper and timely implementation of recently adopted EU measures is essential to improve the framework in which e-commerce activities are taking place in the EU, while focusing on new and better targeted interventions to address remaining problems. The

upcoming reviews of recent legislation are excellent opportunities to adopt a more incisive approach as necessary. The most relevant pieces of legislation include the Regulation on cross-border parcel delivery services, the Geo-blocking Regulation, and the Regulation on platform-to-business relations (P2B Regulation);

- Second, three different options would enable the removal of existing regulatory barriers to the functioning of the Digital Single Market for copyrighted content, through either lifting geo-blocking, allowing competition law to prevail over copyright law or introducing a unitary copyright title and a European copyright code;
- Third, the sustainability of e-commerce in the age of platforms relies on a holistic approach, bringing together platforms, businesses, citizens, enhanced action against illicit trade, environmentally friendly ways to power data centres and ICT infrastructure, and tax rules updated to the challenges of the digital age. For sustainable platform-to-business and platform-to-consumer relations, stricter regulation of digital platforms should be considered (in addition to the current provisions of the P2B Regulation). Action is also needed to ensure there is a framework for liability and transparency to support consumer protection, and to explore the role that digital nudging and artificial intelligence could play to improve online consumption outcomes. New technologies, such as blockchain and deep learning, can be used to tackle illicit trade and fraud in e-commerce. The environmental impact of the growing ICT sector (including data centres) needs to be accounted for and mitigated through, for instance, the use of renewable electricity. Finally, as digital taxation is becoming a prominent topic on policy agendas around the world, the potential impact on cross-border e-commerce must also be considered.

This solution may be implemented by adopting a multi-stage approach. In a first stage, emerging costs in the age of platforms – such as issues linked to market power vis-à-vis consumers, illicit trade and illegal content – could be addressed by the upcoming digital services act. In a second stage, the market power of platforms vis-à-vis SMEs and other e-sellers, as well as any remaining barriers to cross-border e-commerce (including issues affecting digital creative content) could be addressed via the proper implementation and revision, if needed, of the pieces of legislation enacted by the previous EU legislature. This second stage may be complemented by a revision of competition rules and completed by an effective solution for the issue of digital taxation and by fostering renewable power purchase agreements across EU Member States.

Still, a multi-stage approach, with several pieces of legislation enacted to tackle specific issues in the field, risks bringing further delays in completing the Digital Single Market, may give rise to inconsistencies and loopholes and lead to less ambitious solutions. Therefore, the awaited digital services act may represent a once-in-a-lifetime opportunity to create a European e-commerce code, setting up a comprehensive and forward-looking framework of solutions in order to maximise the potential gains of e-commerce for the single market, while minimising the costs that can come up across a variety of fields.

INTRODUCTION

When the World Wide Web was still in its infancy¹, the e-Commerce Directive (hereinafter, also referred to as 'the Directive') established in a very timely fashion a framework against which the purchasing of goods and services online could take place in the EU². The Directive has been facilitating electronic commerce in the internal market by harmonising rules concerning, inter alia, transparency, commercial communications (such as online advertisement) and information to be made available to consumers, as well as exemptions to the liability of intermediary service providers³.

The ensuing two decades have been marked by a digital revolution that has shaped the economy and the policy ambitions of the EU. The focus of EU policy-makers has progressively shifted from completing the single market to achieving a Digital Single Market. Today, the Digital Single Market can no longer be considered a 'stand-alone' goal, as digitalisation is now permeating all the sectors and domains of the single market. Tapping into the full potential of the digital economy and boosting e-commerce is a necessary step for the EU economy and a key objective of the Union⁴.

Over time, the Directive has remained unchanged. Therefore, in keeping up with the rapid developments brought by digitalisation, more 'add-on' measures have been adopted to address specific challenges such as geo-blocking, consumer protection, cross-border parcel delivery, and platform-to-business relations, thus mitigating some of the shortcomings of legislation in the face of the ever-evolving digital sphere. Such measures, however, appear to have some limitations and so far have not achieved the level of harmonisation needed for a well-functioning Digital Single Market.

The requirements set by the Directive were designed in a context in which transactions online occurred mostly directly between e-buyers and e-sellers. Perhaps the most important step in the evolution of e-commerce has been the advent of online platforms. From the online medium being simply an additional channel that traders could use to sell directly to consumers, digital developments have reshaped the way buying and selling occurs, with platforms playing an ever more important role as intermediaries of transactions. Platforms are not only virtual marketplaces where e-sellers and e-buyers meet, but they also have a particular business model that, while facilitating e-commerce, raises some question marks about the right governance framework to ensure the sustainable development of e-commerce. The growing role of e-commerce in the economy and the importance of platforms as emerging actors in the digital ecosystem make it clear that an enhanced framework for e-commerce in the EU is necessary to remove remaining obstacles, tap into the full potential of online commerce for the EU economy and further complete the Digital Single Market.

In addition to the typical benefits of e-commerce, the spring of 2020, marked by the COVID-19 pandemic, is showing that online commercial transactions can play a vital role when 'social distancing' becomes the rule that governs any interaction in society. Early data indicates that compared with the same period last year, the volume of online transactions (in terms of both orders and revenues) has increased over the past weeks, especially when it comes to transactions in the home and leisure sub-sector (including food and beverages, entertainment, home and garden, health and beauty, pet

¹ The World Wide Web was launched in 1989, the first website was put online in 1991, the first user-friendly search engines (e.g. Yahoo! and Excite) were only introduced in 1995.

² While finally approved by the Council in 2000, the e-commerce Directive was already proposed by the Commission in 1998.

³ For further details see De Streel, Husovec (2020), The e-Commerce Directive as the cornerstone of the Internal Market: Assessment and Options for Reform, prepared at the request of the IMCO committee.

⁴ European Commission (2017), Mid-Term Review on the implementation of the Digital Single Market Strategy: A Connected Digital Single Market for All. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1496330315823&uri=CELEX:52017DC0228>.

care and home office, among others)⁵. In the short term, e-commerce is effectively contributing to containing the pandemic while preserving the functioning of several commercial activities and reducing discomfort for EU citizens. Lockdown measures taken in EU countries are unlikely to be lifted all at once, but progressively. In the medium term, therefore, e-commerce can help to mitigate future outbreaks by supporting milder forms of social distancing – limiting, for instance, the time spent in shops and supermarkets by ordering online. In the long term, a strong framework for e-commerce and a well-functioning Digital Single Market could build resilience in the EU economy and enable it to adapt more easily and survive similar shocks.

Against this backdrop, this report analyses the role of e-commerce in the internal market and provides a framework to answer the question of how to maximise the current and potential benefits of e-commerce while minimising the ensuing economic and societal costs. More specifically, Section 1 takes stock of accrued and expected benefits from e-commerce. Section 2 identifies the remaining barriers to e-commerce, with special emphasis on cross-border flows. Section 3 examines the role of online marketplaces, given their rising prominence and details the emerging costs of e-commerce in the platform economy. Section 4 proposes solutions to foster cross-border transactions, facilitate cross-border access to digital copyrighted content and ultimately ensure the sustainability of e-commerce in the age of platforms. Section 5 provides concluding remarks and summarises the main policy recommendations to reap the full benefits of the internal market for e-commerce.

⁵ Data suggests that in West and Central Europe the e-commerce orders in the home and leisure sub-sector placed in the past 14 days compared to same period last year have increased by 57% and revenues by 44%. In certain countries, the growth is substantial, for instance 158% revenue growth in Austria and 200% in Romania for the same sub-sector (based on calculations valid for 4 April 2020). Data available at: <https://ccinsight.org/>.

1. BENEFITS

KEY FINDINGS

E-commerce is an enabler of trade. Digital technologies facilitating online exchanges reduce trade costs associated with geographical distance by improving access to information. In some cases, the impact of distance on trade is 65% smaller for transactions online compared to transactions carried out offline.

On the demand side, **e-commerce leads to an increase in household consumption**, an important component of GDP growth. On the supply side, **e-commerce induces efficiency gains in the retail sector**, which lead to positive effects on other sectors, as selling products becomes cheaper.

E-commerce can enhance territorial cohesion by providing a new channel for the selling and purchasing of goods, which is much less dependent on geographical location. It can thus connect individuals and small and medium-sized enterprises (SMEs) from remote locations to the global economy.

In terms of **market size**, e-commerce is more developed in Western European markets compared with Central and Eastern or Southern European markets. There is, however, a **significant scope for catching up and reaping the full benefits of e-commerce**, as markets in Central and Eastern Europe and Southern Europe are growing fast.

E-commerce facilitates the **access of small retailers to (new) markets and new consumer segments**, helping them **gain visibility** and sell their products **by limiting investment needs and operational costs**. Half of the SMEs that sell their products and/or services online use online marketplaces.

E-commerce brings more choice, lower prices, and more convenience to consumers. Welfare gains experienced by EU consumers thanks to e-commerce are estimated at between €34 billion and €204.5 billion per year (0.3–1.7% of EU-27 GDP), as a result of the additional retail channel (online), increased choice, and lower prices. In some cases, prices for products sold online are lower by 2% to 10% compared with the products sold offline.

E-commerce can help bridge the accessibility gap for purchasing goods and services. The access to goods and services facilitated by e-commerce is an advantage **for both the elderly and people with disabilities** in comparison with traditional offline commerce.

The benefits stemming from e-commerce in the EU are crystal clear and affect all economic actors, at all levels. Distances have been 'shortened' and trade costs have been lowered, SMEs have gained access to more and better business opportunities, and consumers have gained access to a wide choice of products and services at lower prices. This section of the report identifies and assesses the most prominent benefits ensuing from the Directive.

1.1. Single market and trade

E-commerce is an enabler of trade. Digital technologies facilitating online exchanges reduce trade costs associated with geographical distance compared with offline commerce. In addition to the most typical barriers to trade, such as tariffs and non-tariff barriers, geographical distance can increase trade

costs through a number of channels, notably high transport costs, limited access to information and lack of trust.

By way of example, Lendle *et al.* (2012)⁶ show that eBay significantly reduces trade costs, based on a sample of 62 countries (including almost all EU countries) covering more than 92% of world trade and the same basket of goods for both online and offline transactions. The study finds that the impact of distance on trade is 65% smaller for transactions online compared with transactions carried out offline. The study argues that this effect is mostly driven by a reduction in information asymmetry and trust frictions: online technologies improve access to information, thus facilitating purchase decisions. More specifically, online marketplaces (in this case, eBay) contribute to the so-called 'death of distance'⁷.

Similar effects are found looking specifically at the case of the EU. A 2013 study comparing the online and offline trade of goods in the EU-27 (prior to the accession of Croatia to the EU) using data from 2011 finds that the online channel leads to a reduction in the distance-related trade costs⁸. As noted previously, the effect on trade costs is driven by a reduction in information frictions facilitated by the digital economy. Reductions in trade costs thanks to the e-commerce technology are confirmed also by a 2015 study⁹.

More recent measures taken by the EU to facilitate e-commerce are estimated to increase the benefits for the single market. For instance, it is estimated that the new measures adopted in the 2014-2019 legislature in the field of e-commerce, content and online platforms would bring additional benefits of roughly €14.6 billion per year¹⁰.

The key takeaway is the significant positive impact on trade, driven by the wide availability of information facilitated by e-commerce. At the same time, other issues become more apparent when buying online from another country, such as language barriers, expensive parcel delivery services and fragmented payment systems¹¹. Remaining and emerging issues are discussed in Chapters 2 and 3.

Driven by technological innovations and reductions in trade costs, the overall impact of e-commerce on the economy is positive, with effects on household consumption and efficiency. It is estimated that e-commerce leads to an increase in household consumption, an important component of GDP growth. On the supply side, e-commerce is also found to induce efficiency gains in the retail sector, which lead to positive effects on other sectors. In other words, other sectors benefit from the increased efficiency of retailers, as this means that selling products becomes cheaper¹².

Finally, e-commerce can enhance territorial cohesion by providing a new channel for the selling and purchasing of goods, which is much less dependent on geographical location. Parts of the EU territory

⁶ Lendle, Olarreaga, Schropp & Vezina (2012), There Goes Gravity: How Ebay Reduces Trade Costs. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2167187.

⁷ Cairncross (2002), The death of distance, RSA Journal, Vol. 149, No. 5502 (2002), pp. 40-42. Available at: <https://www.jstor.org/stable/41380436?seq=1>.

⁸ Gomez-Herrera, Bertin & Turlea (2013), The drivers and impediments for cross-border e-commerce in the EU, JRC. Available at: <https://www.sciencedirect.com/science/article/pii/S0167624514000171?via%3Dihub>.

⁹ Cardona *et al.* (2015), The Macro-Economic Impact of E-Commerce in the EU Digital Single Market, JRC, Institute for Prospective technological Studies Digital Economy Working Paper 2015/09. Available at: <https://ec.europa.eu/jrc/sites/jrcsh/files/JRC98272.pdf>.

¹⁰ The analysis is based on the following pieces of legislation adopted between 2014 and 2019: Regulation (EU) 2018/302 addressing unjustified geo-blocking, Council Regulation (EU) 2017/2454 and Directive (EU) 2017/2455 VAT for e-Commerce, Regulation (EU) 2018/644 on cross-border parcel delivery services, Directive (EU) 2018/1808 Audio-Visual and Media Services (Marcus, Petropoulos, Yeung (2019), Contribution to Growth: The European Digital Single Market. Delivering economic benefits for citizens and businesses, Study for the IMCO committee. Available at: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2019\)631044](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2019)631044).

¹¹ Please see Note 8.

¹² Please see Note 9.

that may be more isolated, like rural areas, can access the global market online, thus overcoming the typical limitations of traditional commerce, especially when it comes to the availability of goods and services. For instance, online platform connectivity seems to have a positive effect on the number of enterprises established in the four poorest regions of Germany. E-commerce has proven to be a 'game-changer' for local entrepreneurship, equipping micro and small enterprises in disadvantaged regions with technology to take advantage of the internet's global reach¹³. These findings were confirmed by a more recent assessment based on a case-study approach¹⁴. E-commerce contributes to creating businesses and jobs in less populated and poorer areas. It also enhances the purchasing power of rural communities through providing greater selection and time savings, as well as ease and lower transportation costs¹⁵.

Currently, the share of e-commerce is significantly higher in Northern and Western European countries compared with Southern or Central and Eastern European countries. According to the Centre for Retail Research¹⁶, the highest shares of e-commerce sales out of total retail sales in 2018 were recorded in the UK (17.8%), Germany (15.1%), France (10.1%), and the Netherlands (9.1%). At the lower end, e-commerce in Italy and in Spain accounted for only 3.4% and 4.8% respectively of the total retail sales in the two countries. A similar pattern emerges when analysing consumer purchases by countries in the EU: a far lower share of Bulgarians and Romanians made online purchases in 2018 (22% and 23% respectively) compared with Danish or German consumers (84% and 79%)¹⁷. Existing differences between Member States provide a significant scope for catching up and reaping the full benefits of e-commerce. Importantly, there are several positive developments in this regard. For instance, while Romanian online purchasing patterns are behind those of Western European countries, Romania also registered an impressive growth of e-commerce sales: almost 30% in 2018 compared with 2017¹⁸. Other estimates show that e-commerce markets in Central and Eastern Europe and in Southern Europe are expected to grow at a higher rate than Western European markets. For instance, among the fastest growing markets in the EU are also the Czech market, projected to grow by 16% between 2017 and 2021, the Italian market with a growth rate of 14% and the Spanish market with 13.5% (the growth rates reported represent the compound annual growth rates)¹⁹.

1.2. SMEs

E-commerce facilitates the access of small retailers to (new) markets and new consumer segments. It also reduces the information asymmetry between SMEs and bigger players in the market, whether it is direct online selling through own websites or intermediated by platforms. The e-commerce sector

¹³ World Economic Forum (2018), How online commerce can help fight inequality. Last consulted on 16 March 2020. Available at: <https://www.weforum.org/agenda/2018/01/ebay-e-commerce-fight-inequality-hanne-melin/>.

¹⁴ Simonelli *et al.* (2019), Sustainability in the Age of Platforms. Last consulted on 16 March 2020. Available at: <https://www.ceps.eu/wp-content/uploads/2019/06/Sustainability-in-the-Age-of-Platforms-1.pdf>.

¹⁵ UNCTAD (2016), E-commerce for Rural Development: Global Trends. Last consulted on 16 March 2020. Available at: https://unctad.org/meetings/en/Presentation/dtl_eweek2016_MSicat_en.pdf.

¹⁶ Centre for Retail Research (n.d.), Online: UK, Europe & N. America, European Online Growth. Last consulted on 16 March 2020. Available at: <https://www.retailresearch.org/online-retail.html>.

¹⁷ Eurostat (2020), E-commerce statistics for individuals: Statistics Explained, p. 2. Available at: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/46776.pdf>.

¹⁸ GPeC (2019), The 2018 GPeC Romanian eCommerce Market Report. Available at: <https://www.gpec.ro/blog/en/in-2018-romanians-have-made-online-purchases-worth-more-than-35-billion-euros-2018-gpec-romanian-e-commerce-market-report>.

¹⁹ J.P. Morgan (2019), J.P. Morgan 2019 Payments Trends – Global Insights Report: European Overview (Data has been provided to J.P. Morgan Merchant Services by Edgar, Dunn & Company). Available online at: <https://www.jpmorgan.com/merchant-services/insights/reports/european-overview>.

inquiry notes that online marketplaces particularly help SMEs gain visibility and sell their products by limiting investment needs and operational costs²⁰.

According to a Flash Eurobarometer survey of SMEs conducted in 2016, 37% of SMEs sell their products and/or services online. Out of this share, almost half use online marketplaces²¹. Looking at the characteristics of such SMEs, a company is more likely to use the online channel for selling the more employees it has. For instance, 36% of companies with up to 9 employees report that they rely on e-commerce compared with 42% of companies with 10 to 49 employees and 53% of companies with 50 to 250 employees. This observation may suggest that, with the possibility of accessing new markets by relying on digital technologies, companies also grow faster (and thus rely on more employees) to expand their business activities²².

E-commerce increases price transparency²³, allowing retailers to track the prices of competitors. SMEs can benefit from this effect by gaining more information about the market, which can feed into their competitive strategies. According to a 2017 survey informing the e-commerce sector inquiry²⁴, over half of the retailers selling online that replied to the survey reported tracking the online prices of competitors. The majority of them also reported adjusting their prices based on the information gained²⁵.

SMEs benefit not only from more information about their competitors, but also from more insights into the behaviour and preferences of consumers. E-commerce facilitated by, for instance, online marketplaces help SMEs to become more visible and gain a broader customer base. The benefits are not limited to the direct visibility effect and ease of setting up the online business. According to a 2016 Flash Eurobarometer, two-thirds of the surveyed SMEs confirm that the information on consumer behaviours and preferences that they receive through online marketplaces is helpful for their business²⁶.

Having the ability to access new data on customers and analyse consumer behaviour can open new opportunities for SMEs. First, SMEs can stay competitive and meet the needs of the market by adapting products and services based on feedback from consumers. Second, SMEs can leverage such new data to break into new markets, including in an international context. Country differences may represent a barrier to how quickly and efficiently SMEs adapt their strategies to new markets. Yet, e-commerce may lower such barriers by enabling retailers to collect data more quickly and thus better target their e-commerce strategies to different markets and consumer segments²⁷.

²⁰ European Commission (2017), Staff Working Document: Final report on the E-commerce Sector Inquiry, available at: https://ec.europa.eu/competition/antitrust/sector_inquiry_swd_en.pdf.

²¹ European Commission (2016), Flash Eurobarometer 439: The use of online marketplaces and search engines by SMEs. Available at: https://ec.europa.eu/information_society/newsroom/image/document/2016-24/fl_439_en_16137.pdf.

²² SMEs that are moving their operations online are quickly realising the potential of the digital marketplace and fully reaping the benefits of a global ecosystem. The Chartered Trading Standards Institute found that online businesses grow six times faster than offline businesses. They are also employing more people as we have seen in Germany where 93% of online SMEs increased employment over the past three years compared with only 50% of offline SMEs. For further details please see: Paypal (2019), Small Business Growth in Europe: Digitization is Enabling EU SMEs to Expand Globally, p. 11. Available at: https://publicpolicy.paypal-corp.com/sites/default/files/policy/Small_Business_Growth_in_Europe.pdf.

²³ Please see Note 29.

²⁴ European Commission (2017), Staff Working Document: Final report on the E-commerce Sector Inquiry, p. 51. Available at: https://ec.europa.eu/competition/antitrust/sector_inquiry_swd_en.pdf.

²⁵ It must be noted, however, that larger companies are more likely to track online prices compared to smaller companies.

²⁶ Please see Note 21.

²⁷ Hanell *et al.* (2019), "It's a new game out there": e-commerce in internationalising retail SMEs. Available at: <https://www.emerald.com/insight/content/doi/10.1108/IMR-03-2018-0107/full/html>.

1.3. Consumer welfare

E-commerce brings more choice, lower prices, and more convenience to consumers. The number of consumers in the EU buying products and services online has been growing significantly. From approximately 50% in 2009, the latest figures show that on average 71% of internet users in the EU made online purchases in 2019. The younger generations are without surprise the drivers of change, but the ease and comfort of e-commerce is making itself noticed, and e-commerce as such is embraced by all age groups. While the highest proportions of e-shoppers are predominantly from the age groups of 16-24 (78% of internet users) and 25-54 (76% of internet users), it is noteworthy that also the elderly are resorting to e-buying at an increasing rate (57% of internet users in the age group in 2019 compared with 47% in 2009)²⁸.

Beyond the convenience of the 'one-click-away' purchase, the development of e-commerce has brought tangible advantages for consumers: a wider choice of goods and services, price transparency and more competition, ultimately resulting in lower prices and better services. The Commission noted in the documents supporting the e-commerce sector inquiry that price transparency is one of "the features that most affects the behaviour of customers and retailers" alike²⁹. The ability to easily compare products or services on different dimensions (including the price) using tools like price comparison websites enables customers to find the 'best deals'.

Such benefits from e-commerce can be estimated and quantified. In economic terms, the lower prices and better choice brought by e-commerce in comparison with traditional commerce generate welfare gains by increasing consumer surplus. Several studies have attempted to estimate the additional surplus that consumers in the EU could benefit from thanks to enhanced e-commerce. Duch-Brown and Martens (2014) estimate that the welfare gains experienced by EU consumers stemming from e-commerce amount to €34 billion or 0.3% of EU-27 GDP (based on data collected prior to the accession of Croatia), compared with the counterfactual scenario in which no e-commerce activity takes place. Based on an analysis of a basket of electronic goods, the same study also finds that prices for products sold online are lower by 2% to 10% compared with the products sold offline³⁰.

More ambitious scenarios show even greater potential benefits for consumer welfare. A study from 2011 estimates the consumer surplus in a scenario where a single EU consumer market for e-commerce is achieved and the market share of e-commerce constitutes 15% of total retailing (compared with a share of 3.5% at the time when the analysis was performed). Under these assumptions, the consumer surplus would amount to €204.5 billion per year or 1.7% of EU-27 GDP. Two channels contribute to this surplus: the lower prices and the variety of goods and services available. The analysis shows that the increased choice contributes more to the estimated consumer surplus: €134.1 billion per year compared with €70.4 billion per year resulting from lower online prices³¹. The underlying hypotheses may seem quite ambitious, however the pace of the developments in this sector should not be

²⁸ Eurostat (2020), E-commerce statistics for individuals. Last consulted on 16 March 2020. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals.

²⁹ Please see note 24, p. 51.

³⁰ Duch-Brown and Martens (2014), Consumer Benefits from the EU Digital Single Market, p. 21-23. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2446964.

³¹ Civic Consulting (2011), Consumer market study on the functioning of e-commerce and Internet marketing and selling techniques in the retail of goods, Final Report, Part 1: Synthesis Report, prepared for the Executive Agency for Health and Consumers, EU, pp. 104-105. Available at: <https://op.europa.eu/en/publication-detail/-/publication/24877d5b-a4a0-11e5-b528-01aa75ed71a1>.

underestimated: in 2018 e-commerce accounted for about 9% of retail trade, based on a selection of European countries³².

Several EU measures have been adopted since these estimations were developed with a view to further support and boost cross-border e-commerce (see Table 2 by way of example). Therefore, while the quantitative analysis performed so far provides important insights into the economic potential of e-commerce for the internal market, it is likely that a fair share of the estimated benefits has already accrued, and more are bound to be realised.

Beyond economic benefits, e-commerce can also strengthen social cohesion. The EU will soon be confronted with an array of issues linked to services fit for an ageing population. According to projections by Eurostat, the share of the population aged 65 and older will increase from approximately 20% currently to 28.5% in 2050³³. The older segment of the population represents an important and growing share of the demand for goods and services, with specific needs when it comes to accessing the market. E-commerce can help bridge the accessibility gap for purchasing goods and services. Issues such as reduced mobility will make e-commerce more attractive, as well as linked services like deliveries. Moreover, the access to goods and services facilitated by e-commerce is an advantage not only for the elderly, but also for people with disabilities in comparison with the traditional offline commerce³⁴.

³² Statista (2020), Retail e-commerce sales as share of retail trade in selected countries from 2014 to 2018. The statistics include the following European countries: UK, Germany, France, Sweden, Netherlands, Switzerland, Austria, Belgium, Spain, Poland, Italy. Last consulted on 16 March 2020. Available at: <https://www.statista.com/statistics/281241/online-share-of-retail-trade-in-european-countries/>.

³³ Eurostat (2020), Population structure and ageing. Last consulted on 16 March 2020. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Population_structure_and_ageing#Past_and_future_population_ageing_trends_in_the_EU.

³⁴ Hussain *et al.* (2016), Assisting Disabled Persons in Online Shopping: A Knowledge-Based Process Model, Journal of Basic & Applied Sciences, 2016, 12, 23-31. Available at: <http://pdfs.semanticscholar.org/8c1e/fc01804f727d6ea3cc716e50be88ddb0964.pdf>.

2. REMAINING OBSTACLES

KEY FINDINGS

The e-commerce sector continues to grow: consumers are making more online purchases and traders are selling more online, both domestically and to other EU countries. But barriers still exist, especially to cross-border e-commerce.

The **biggest difficulties for businesses** are posed by the **high costs of delivering or returning products**, a cross-cutting issue affecting both SMEs and larger companies. Other obstacles are difficulties in **resolving complaints and disputes**, lack of knowledge of foreign languages, issues with adapting product labelling, and territorial restrictions that may be imposed by business partners.

EU consumers making online purchases from other Member States have encountered the following geo-blocking barriers: the retailer or service provider has **refused to deliver** to the country of the consumer, the consumer has been **redirected to a website in their own country** with different prices or the **method of payment from the consumers' country has not been accepted** by the retailer/service provider. Other issues include the slow speed of delivery and technical failure when placing an order online.

Cross-border access to copyrighted content is still very limited. In 2019, only half of the European internet users buying online or attempting to access digital copyrighted content (mainly audiovisual) from a different Member State were able to get the desired content, with the other half experiencing a variety of geo-blocking practices, such as refusal to sell and redirection to the local version of the service.

The full potential of the Digital Single Market for copyrighted content is still largely untapped. **Foregone benefits** include, inter alia, wider, immediate and cost-effective access to information and content, broadened access to European cultural diversity and more opportunities for new business models.

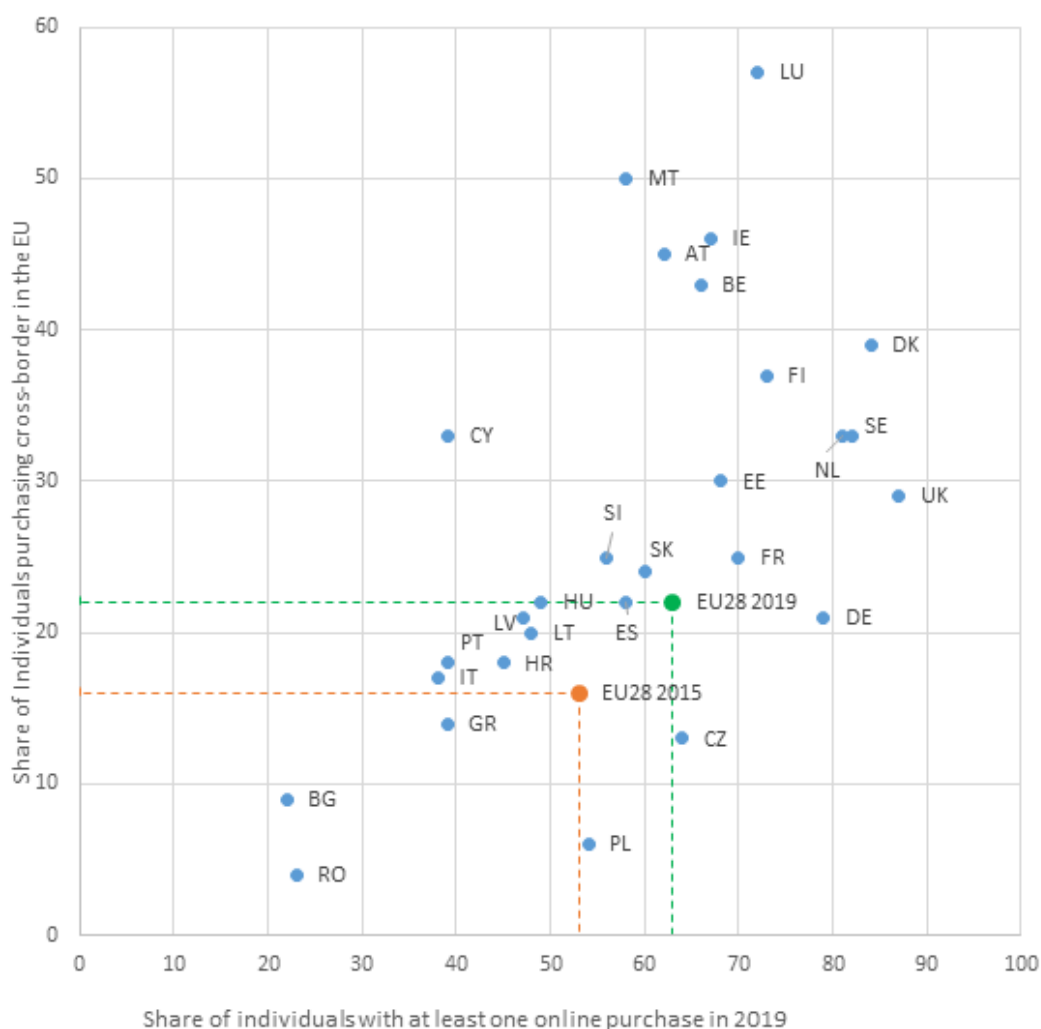
The market for e-commerce in the EU has grown over the last two decades, and it has the potential to expand further and generate more benefits for consumers and businesses. Yet, to fully reap such benefits, a number of barriers still need to be removed. This section of the report looks at the remaining obstacles affecting cross-border e-commerce, with a special focus on cross-border access to digital creative content.

2.1. Cross-border e-commerce

The online buying and selling patterns in the EU, especially across borders, contribute to identifying the most relevant obstacles to e-commerce. According to Eurostat, 63% of individuals in the EU made at least one online purchase in 2019 and 22% of individuals purchased online from another EU country. The numbers mark an increase compared with 2015, when 53% of individuals reported making at least one online purchase in that year and 16% reported buying online across borders (see Figure 1). Unsurprisingly, one of the drivers of cross-border e-commerce seems to be the wider choice that can be accessed beyond the national market. Some of the smaller markets in the EU report higher shares of consumers buying online cross-border: Luxembourg, Malta, Austria, Ireland and Belgium. A small national market may lead consumers to search for alternatives outside the country. Together with market size, language affinities with neighbouring countries plays an important role. Austrian

consumers, for instance, direct their attention mostly to German sellers. In fact, 72% of cross-border online shoppers in Austria made purchases from a German website in 2018. Similarly, Belgian consumers turn to French or Dutch online retailers. In 2018, 45% of Belgians buying online cross-border chose Dutch websites and 41% chose French websites³⁵.

Figure 1: Total online purchases and cross-border purchases in the EU in 2019
(in percentages)



Source: Eurostat (2020), Internet purchases by individuals (Dataset code: isoc_ec_ibuy)

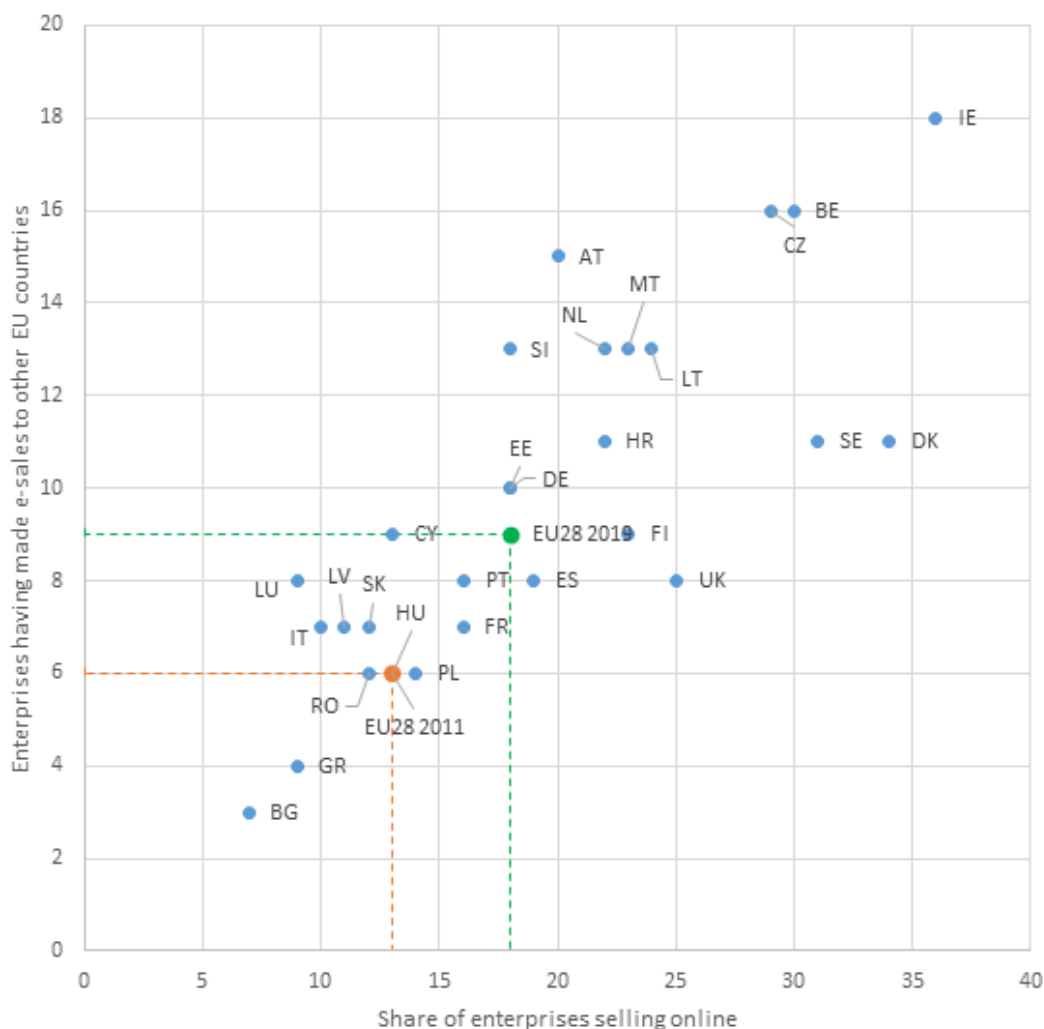
Turning to the supply side, the share of enterprises selling online³⁶ has grown from 13% in 2011 to 18% in 2019. At the same time, the share of enterprises that have made online sales to other EU countries increased from 6% in 2011 to 9% in 2019 according to Eurostat. The market size effect could play a role in some countries as e-sellers look abroad for additional demand: for instance, in Belgium, the Czech Republic or Austria (see Figure 2).

³⁵ The shares of cross-border e-buyers from Austria and Belgium can be consulted in the following report: DPD Group (2019), E-shopper barometer report 2018, pp. 14-15.

Available at: https://www.dpd.com/group/wp-content/uploads/sites/77/2019/03/20190327_e-shopper_barometer_2018.pdf.

³⁶ The share refers to enterprises selling online (at least 1% of turnover), all enterprises without financial sector (10 or more employees).

Figure 2: Enterprises with online sales and enterprises with online cross-border sales in the EU in 2019



Source: Eurostat (2020), E-commerce sales (Dataset code: isoc_ec_eseln2)

The growth of the sector is also confirmed when analysing the evolution of online retail as a share of total retail: in 2018, e-commerce was responsible for 8.8% of the total retail sales in Europe³⁷, having increased its share from 4.8% in 2012. While growing, the European e-commerce market is still smaller than the US market, where the share of online retail sales out of total retail sales was estimated at 16% for 2019³⁸. In China the share is even greater, with e-commerce accounting for approximately 30% of total retail sales in 2018³⁹.

The trends in e-commerce, in terms of both supply and demand, are positive, showing that the sector continues to grow. There remain, however, a number of obstacles that need to be removed to realise the full potential of e-commerce in the EU. Section 2.2 delves into a series of barriers to cross-border

³⁷ The analysis is based on a sample of 10 EU countries (Austria, Belgium, France, Germany, Italy, the Netherlands, Poland, Spain, Sweden, UK) and Switzerland. Source: Centre for Retail Research (n.d.), Online: UK, Europe & N. America European Online Growth. Last consulted on 7 April 2020. Available at: <https://www.retailresearch.org/online-retail.html>.

³⁸ Digital Commerce 360 (2020), US ecommerce sales grow 14.9% in 2019. Last consulted on 7 April 2020. Available online: <https://www.digitalcommerce360.com/article/us-ecommerce-sales/>. Calculations based on U.S. Department of Commerce data.

³⁹ eMarketer (2019), China Ecommerce 2019: Retail Ecommerce Stays Strong as Geopolitical and Economic Headwinds Dampen Overall Retail Sector. Last consulted on 7 April 2020. Available online: <https://www.emarketer.com/content/china-ecommerce-2019>.

e-commerce, such as issues with deliveries and returns, dealing with complaints, or facing restrictions to business from partners. In addition, Section 2.3 takes a closer look at particular issues affecting copyrighted content.

2.2. Main barriers to cross-border e-commerce

Both businesses and consumers report the existence of barriers to e-commerce, as stressed also in the recent Commission Communication on identifying and addressing barriers to the single market⁴⁰. Table 1 summarises the main issues reported by both groups. While the majority of enterprises having made sales via websites to other EU countries reported no obstacles to their activities in 2019 (62% of enterprises), 37% faced a number of barriers (see Figure 3). In particular, the greatest difficulties were posed by the high costs of delivering or returning products – a recurring issue. The results are similar for both SMEs and large companies, suggesting that such issues are rather cross-cutting.

Table 1: Barriers to online buying and selling encountered by enterprises and consumers

Type of barrier	Barriers encountered by enterprises selling online cross-border	Barriers encountered by consumers purchasing online
Barriers linked to payment and delivery	High costs of delivering and returning products	<ul style="list-style-type: none"> • Speed of delivery slower than indicated • Service provider refuses payment from the consumer's country • Foreign retailer does not deliver to the consumer's country • Fraud
Post-purchase barriers	Resolving complaints and disputes	<ul style="list-style-type: none"> • Difficult process for complaints/redress • Wrong/damaged goods delivered
Technical barriers	Adapting product labelling	<ul style="list-style-type: none"> • Technical failure of the website while ordering or paying
Other barriers	<ul style="list-style-type: none"> • Language barriers • Restrictions from business partners 	<ul style="list-style-type: none"> • Being redirected to a website in the consumer's country where prices were different • Difficulty in finding information about guarantees

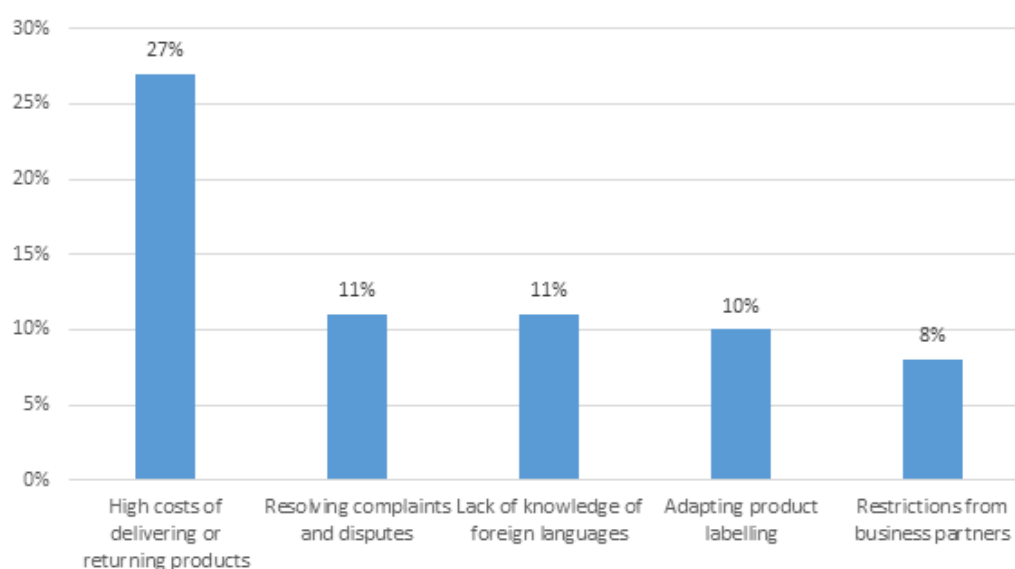
Source: Eurostat (2020), E-commerce statistics 2019; Eurostat (2020), E-commerce statistics for individuals 2019; European Commission (2019) Consumer Conditions Scoreboard

Note: From the consumer's perspective, the barriers are reported taking into account both domestic and cross-border e-commerce; the Eurostat data, which do not allow for differentiating between barriers to domestic and cross-border e-commerce, were complemented with additional data on cross-border barriers experienced by consumers from the Consumer Conditions Scoreboard

⁴⁰ European Commission (2020), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Identifying and addressing barriers to the Single Market, COM(2020) 93 final, pp. 6-9.

According to estimates from 2015, cross-border delivery costs for letters or parcels were found to be as much as 3 to 4.7 times higher than domestic delivery costs⁴¹. The EU has acted on these issues in the meantime and adopted a regulation on cross-border parcel delivery services (Regulation (EU) 2018/644), which entered into force in May 2018. The regulation aims to increase the transparency of delivery prices and foster competition⁴². A report evaluating the implementation of the regulation will be submitted by the Commission to the European Parliament and the Council by mid-2020. Other obstacles experienced by businesses trying to sell online in other EU countries relate to i) difficulties in resolving complaints and disputes; ii) lack of knowledge of foreign languages; iii) issues with adapting product labelling; and iv) territorial restrictions that may be imposed by business partners.

Figure 3: Obstacles faced by businesses when selling online to other EU countries in 2019 (percentage of enterprises with web sales to other EU countries; EU-28)



Source: Eurostat (2020), Obstacles for web sales (Dataset code: isoc_ec_wsobs_n2)

Some of the issues raised by businesses are echoed by consumers. For instance, a consumer survey part of the Consumer Conditions Scoreboard⁴³ found that consumers also experienced problems when it comes to delivery services. Out of the consumers who had made online purchases from other EU countries, 12% reported that the retailer or service provider refused to deliver to the country of the consumer. The survey also revealed that 12% of respondents experienced the issue of being redirected to a website in their own country with different prices, and 5% could not pay for the chosen product or service because the method of payment from the consumer's country was not accepted by the retailer/service provider. As a result of such problems, consumers tend to be less confident when buying online from a different EU country (48%) than domestically (72%)⁴⁴.

In addition to the cross-border issues, Eurostat data completes the picture of barriers consumers face when buying online both domestically and cross-border (see Figure 4). In 2019, 35% of individuals who

⁴¹ Université Saint-Louis Bruxelles (2015), Final Report: Econometric study on parcel list prices. Available at: <https://ec.europa.eu/docsroom/documents/14647>.

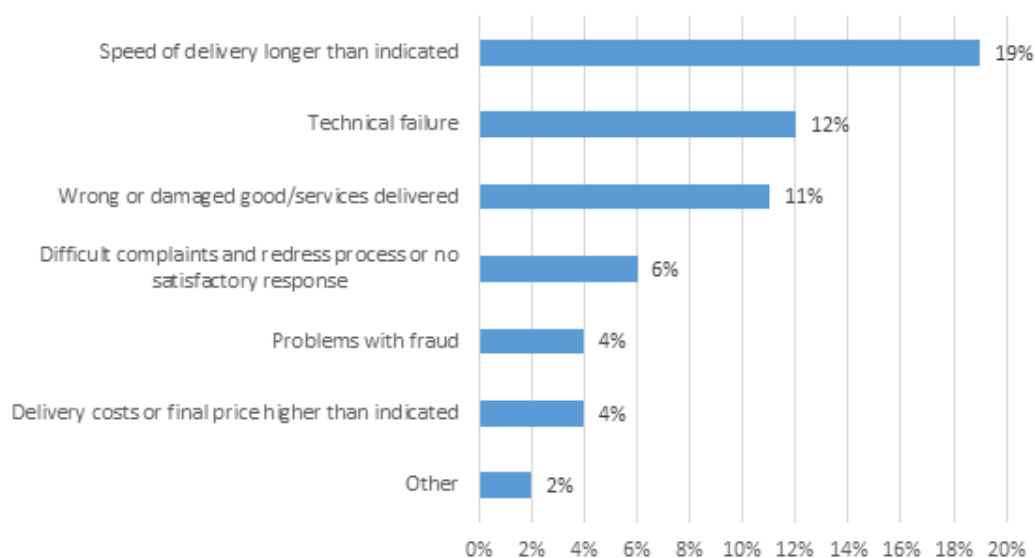
⁴² European Commission (n.d.), Parcel delivery in the EU. Last consulted on 16 March 2020. Available at: https://ec.europa.eu/growth/sectors/postal-services/parcel-delivery_en.

⁴³ European Commission (2019), Consumer Conditions Scoreboard. Consumers at home in the Single Market, p. 75. Available at: https://ec.europa.eu/info/files/consumer-conditions-scoreboard_en.

⁴⁴ Ibid., p. 13.

made online purchases reported that they encountered problems in the process. The slow speed of delivery was the most common issue (reported by 19% of individuals who made online purchases), followed by technical failure when placing an order online (12%). As some of these issues have been on the radar of the EU and led to the introduction of new rules, it is important to track the implementation of the most recent EU measures, and their effectiveness (see Section 4.1).

Figure 4: Problems encountered when making online purchases in 2019 (percentage of individuals who bought or ordered goods or services over the internet for private use; EU-28)



Source: Eurostat (2020), Problems encountered by individuals when buying/ordering over the internet (Dataset code: isoc_ec_iprb)

Based on the barriers identified by e-buyers and e-sellers, two priority areas arise for consolidating the single market for e-commerce and generating economic benefits:

- Addressing delivery issues such as high charges, long delivery times, or refusals to deliver. Estimates from 2015 suggested that up to €11 billion could be saved annually by consumers if they had access online to the full spectrum of available goods and services in the EU⁴⁵. Price transparency – a measure set out in recent EU legislation – is one step in this direction, but it may only bring benefits in the long term (see also Section 4.1). Addressing delivery issues would incentivise both e-retailers to engage more in cross-border sales, and e-consumers to buy online across borders; and
- Facilitating the resolution of complaints and disputes. While the EU has adopted legislation and implemented tools to support the process of resolving complaints and disputes, the perception of both consumers and sellers is that barriers in this field still exist. The framework for alternative dispute resolution (out-of-court mechanisms)⁴⁶ and the platform for online dispute

⁴⁵ European Commission (2015), Cheaper cross-border parcel delivery to boost e-commerce in the EU. Last accessed on: 8 April 2020. Available at: https://ec.europa.eu/growth/content/cheaper-cross-border-parcel-delivery-boost-e-commerce-eu-0_en.

⁴⁶ Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR). The Directive requires full coverage of both domestic and cross-border disputes between consumers and businesses in all retail sectors, online and offline. The full coverage

resolution of consumer disputes⁴⁷ are helping to alleviate this issue. According to a 2019 report on the application of the measures, however, there are still shortcomings, such as insufficient awareness of the existing options, national legislation in the field that is difficult to navigate, and limited uptake by traders⁴⁸. The framework for resolving complaints and disputes is particularly important for building trust between consumers and traders, and reducing the risks and costs associated with e-commerce.

2.3. Specific barriers to accessing digital creative content

Particular barriers arise at the intersection between e-commerce and copyrighted content, mandating special attention. Copyright-intensive industries represent a sizeable share of the EU economy. Between 2014 and 2016, they contributed to more than 7% of total employment in the EU and about 7% of EU GDP⁴⁹. Accessing digital creative content is the most popular activity performed by internet users in the EU. In 2019, more than 80% of the internet users in the EU were accessing music, videos and games online, and more than 30% of them were specifically relying on video-on-demand services⁵⁰.

Cross-border access to copyrighted content, however, is still very limited. While 25% of European internet users were buying online from a different Member State in 2019⁵¹, 15% of internet users attempted to access digital copyrighted content (mainly audiovisual) in another EU country. Interestingly, only half of them were able to get the desired content, with the other half experiencing a variety of geo-blocking practices including, among others, refusal to sell and redirection to the local version of the service⁵². This result is largely aligned with the findings of the e-commerce sector inquiry, which revealed that the large majority of digital content providers rely on geo-blocking practices⁵³.

Against this background, it is apparent that the full potential of the Digital Single Market for copyrighted content is still largely untapped. Foregone benefits include, inter alia, wider, immediate and cost-effective access to information and content, broadened access to European cultural diversity and more opportunities for new, pan-European business models⁵⁴. Indeed, the main reasons for EU internet users to search for digital creative content in another EU country are the unavailability in their

was achieved in 2018. For further details see: European Commission (2019), Report on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes, COM(2019) 425 final.

⁴⁷ Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes. The platform was launched by the European Commission in 2016. See: <https://ec.europa.eu/consumers/odr/>.

⁴⁸ European Commission (2019), Report on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes, COM(2019) 425 final.

⁴⁹ EPO and EUIPO (2019), IPR-intensive industries and economic performance in the European Union. Available at: [https://www.euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/IPR-intensive industries and economic EU/WEB IPR intensive Report 2019.pdf](https://www.euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/IPR-intensive%20industries%20and%20economic%20performance%20in%20the%20EU%20WEB%20IPR%20intensive%20Report%202019.pdf).

⁵⁰ European Commission (n.d.), DESI database. Last consulted on 16 March 2020. Available at: [https://digital-agenda-data.eu/charts/desi-components#chart={"indicator":"desi_3b2_mvq","breakdown-group":"total","unit-measure":"pc_ind_iu3","time-period":"2017"}](https://digital-agenda-data.eu/charts/desi-components#chart={).

⁵¹ Eurostat (2020), E-commerce statistics for individuals 2019. Last consulted on 16 March 2020. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals.

⁵² European Commission (2019), Flash Eurobarometer 477b: Cross-border access to online content.

⁵³ Please see Note 29.

⁵⁴ Maciejewski *et al.* (2014), Streaming and online access to content and services, study for the IMCO committee. Available at: [https://europarl.europa.eu/RegData/etudes/etudes/join/2014/492435/IPOL-IMCO_ET\(2014\)492435_EN.pdf](https://europarl.europa.eu/RegData/etudes/etudes/join/2014/492435/IPOL-IMCO_ET(2014)492435_EN.pdf).

country of residence of the specific content they seek, a wider choice available abroad and the need to access content in another language⁵⁵.

Interestingly, the main barrier to cross-border trade, i.e. time and costs of delivery (see Section 2.2), does not affect digital services. Notably, the provision of digital creative content requires no waiting time for delivery, entails very small distribution costs that are not directly charged to consumers⁵⁶ and, more generally, does not face the typical distance-related barriers to trade. In this context, the most prominent obstacle to cross-border access to digital creative content is rooted in the current EU copyright framework, which legitimates market partitioning along national borders⁵⁷. In fact, by relying on the 'territoriality principle'⁵⁸, right holders can license their work on a country-by-country basis. In addition, as under the InfoSoc Directive⁵⁹, the online delivery of intangible works is considered a service and the 'exhaustion principle' does not apply to online services⁶⁰ – right holders have the full right to prevent their licensees from offering the licensed content in a territory outside the geographical scope of their license⁶¹.

Territorial licensing agreements between right holders and service providers that are permitted under the EU copyright legislation may generate two types of negative impacts on consumers⁶². First, they limit the portability of copyrighted content abroad. Subscribers to online services in a certain Member State (e.g. to stream music or movies) are *de jure* unable to use the same service when moving, even temporarily, to another EU country. This issue has been partially solved by the legal fiction created by the Portability Regulation⁶³. Second, they limit cross-border accessibility. Consumers living in a certain Member State are not able to access and use online services providing copyrighted content in another Member State. This situation generates in turn two main effects: i) some EU consumers are unable to access copyrighted content that is instead available to other consumers in other Member States; ii) even when the same service is provided across Member States, consumers can only subscribe to their 'national' offer, at local prices and conditions. By way of example, Apple iTunes Store is available in all Member States but consumers can only purchase, e.g. movies, from their national store, and content availability varies across national web-stores. In a similar vein, consumers can only subscribe to their national Spotify service and, although music content is largely the same across countries, the monthly price ranges from €4.99 in Bulgaria to €9.99 in, e.g. Belgium and Italy.

⁵⁵ Please see Note 52.

⁵⁶ Hidden delivery costs are linked to investment in technologies that are required to ensure high quality online service content, such as the multiple interconnected servers that are part of the so-called Content Delivery Networks and ensure fast and efficient access to digital content across the EU.

⁵⁷ Simonelli (2016), Combating Consumer Discrimination in the Digital Single Market, study for the IMCO committee. Available at: [https://europarl.europa.eu/RegData/etudes/STUD/2016/587315/IPOL_STU\(2016\)587315_EN.pdf](https://europarl.europa.eu/RegData/etudes/STUD/2016/587315/IPOL_STU(2016)587315_EN.pdf).

⁵⁸ The territorial scope of copyright and related rights conferred by national legislation is limited to the territory of the Member State where such rights are granted and protected.

⁵⁹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ L 167, 22.6.2001.

⁶⁰ Article 4 of Directive 2001/29/EC (InfoSoc Directive) confines the scope of the exhaustion principle to the distribution right, which concerns only physical media embodying copyrighted works.

⁶¹ Renda *et al.* (2015), The Implementation, Application and Effects of the EU Directive on Copyright in the Information Society, European Parliament. Available at: <https://www.ceps.eu/ceps-publications/implementation-application-and-effects-eu-directive-copyright-information-society/>.

⁶² Renda *et al.* (2015), Policy Options for Improving the Functioning and Efficiency of the Digital Single Market in the Field of Copyright, European Parliament, available at: <https://www.ceps.eu/ceps-publications/policy-options-improving-functioning-and-efficiency-digital-single-market-field/>; please also see Note 54.

⁶³ Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market. OJ L 168, 30.6.2017, p. 1–11; Mazziotti and Simonelli (2016), Cross-border portability of online content services. Available at: <https://www.ceps.eu/ceps-publications/regulation-cross-border-portability-online-content-services-roaming-netflix-or-end/>.

Geo-blocking practices limiting cross-border sales are required by the majority of contractual agreements between right holders and service providers in the field of audiovisual content (e.g. fiction TV and movies) and sports events. Such practices still play an important role in distribution agreements for music, where however, multi-territorial licenses are nonetheless relatively more frequent⁶⁴. The online distribution of films, TV series and other audiovisual content is still dominated by territorial licensing agreements that partition the internal market along national borders. In 2019, six out of ten internet users attempting to access audiovisual content in another Member State were geo-blocked. Such a limitation may affect between 40 million (9% of EU internet users⁶⁵ tried to access audiovisual content in another Member State in 2019) and 180 million Europeans (30% of EU internet users who did not try to access audiovisual content in another Member State in 2019 would still be interested in such access)⁶⁶.

⁶⁴ Voorburg (2018), E-Commerce Issues Paper. Available at: <https://www.voorburggroup.org/Documents/2018%20Rome/Papers/2001.pdf>.

⁶⁵ Internet users were about 90% of the total EU population in 2019. Eurostat (2020), Individuals - internet use [isoc_ci_ifp_iu].

⁶⁶ Please see Note 52.

3. EMERGING COSTS IN THE AGE OF PLATFORMS

KEY FINDINGS

E-commerce platforms are playing an ever more important role as orchestrators of online purchases. The value of transactions intermediated by digital platforms in Europe is estimated to grow in the next years by up to 35% per year.

A significant share of businesses sell through marketplaces: 40% of the EU companies selling online relied on marketplaces in 2018. Evidence shows that enterprises which sell online via large platforms are less impacted by financial and market barriers. SMEs can use platforms to overcome cross-border barriers and build visibility in a new market by relying on platform services that are trusted by local consumers. E-commerce platforms offer a variety of services to business users and reduce the upfront costs of setting up an online business. Platforms thrive on market fragmentation: by effectively removing obstacles to e-commerce, **they are contributing to build the EU Digital Single Market.**

Online consumption has come to rely significantly on digital intermediaries. As much as 60% of the private consumption and 30% of the public consumption of goods and services in the EU digital economy is made possible by online intermediaries. For consumers, platforms provide a trustworthy framework ensuring, inter alia, a secure payment system, clear policies on data privacy, and information on e-sellers.

At the same time, e-commerce platforms, through their market power, may **reduce competition,** put **small retailers in a disadvantaged position** and **steer demand** for products and services. Suppliers face a variety of issues when dealing with platforms: problems with terms and conditions and how these are applied by platforms; refusal of access to the platform; competition from the platform's own services; a general lack of transparency; and obstacles to accessing data about customers. The fees charged by platforms can pose a major burden for small retailers. Through rankings and default settings for search outputs, e-commerce platforms affect purchase decisions.

Illicit trade can proliferate with the expansion of online trade. The share of counterfeit and pirated goods trafficked through small parcels is growing. Detection and removal from the market of fake goods is thus difficult online and very strenuous and costly once the online order is placed and the goods are passed along in the delivery system.

E-commerce, as part of the wider information and communication technologies (ICT) sector, has significant energy costs. Estimates show that the ICT sector is responsible for 7% of global electricity consumption. The share is expected to grow to 13% of global electricity consumption by 2030. Data centres are projected to account for 3% to 8% of global electricity consumption by 2030.

As online platforms become increasingly more important for e-commerce, the new business models that they introduce in the economy are raising questions **about the fitness for purpose of the current corporate tax rules.** New taxation needs to avoid any negative spillover disproportionately affecting SMEs and small retailers.

When the proposal for the e-Commerce Directive was tabled by the Commission back in 1998, most of the e-commerce transactions were concluded directly between consumers and sellers without any intermediation, except for the (neutral) intermediation of internet service providers enabling consumers and sellers to participate in the internet. The nature of e-commerce has changed radically

over the last 20 years, with online marketplaces, such as Amazon, eBay and the fast-growing Alibaba group⁶⁷ playing an ever more important role as orchestrators of online purchases. While the benefits of e-commerce, and of online platforms for e-commerce in particular, are tangible and cover multiple dimensions, such a rapidly evolving field is bound to also have pressure points and associated costs. Taking into account a variety of stakeholders and impacts, from economic to environmental, this section of the report examines the contribution of digital platforms to e-commerce and takes a closer look at four main issues linked to the growth of e-commerce platforms: concentration of market power, illicit trade, environmental costs and taxation.

3.1. Online platforms and e-commerce

Sellers benefit from online platforms in different ways, e.g. to lower the costs to set up an e-commerce system, to get greater access to consumers and new markets at home and abroad, and to enable them to rely on specialised services like delivery and advertising. For consumers, an online marketplace makes readily available a greater choice of products and can help mitigate trust issues by providing a framework for secure payment and policies for guarantees. Virtual markets ultimately help bring sellers and buyers together, breaking traditional physical barriers that transactions offline would normally face.

Against the backdrop of the multiple opportunities that they represent for the digital economy, online platforms are becoming increasingly important in the development of e-commerce. The value of transactions intermediated by digital platforms in Europe is estimated to grow over the coming years, with some studies estimating growth of 35% per year⁶⁸. Online platforms for e-commerce are attracting a significant share of the desktop internet traffic in several Member States: between 20.9% (in the Netherlands) and 43% (in Germany) of the total desktop internet traffic related to e-commerce goes to the top 10 online marketplaces⁶⁹. Platforms also generate a significant share of the online retail sales in the EU-28. In 2015, the three largest portions of the overall online retail sales in the EU included third-party merchants on Amazon (10.8% of the total), Amazon direct sales (9.1%)⁷⁰ and third-party merchants on eBay (6.8%)⁷¹.

Based on Eurostat data⁷², 40% of the EU companies selling via websites relied on marketplaces in 2018. E-commerce platforms were particularly popular among enterprises with web sales in Italy (61%), Germany (51%), Austria (50%) and Poland (49%). Selling through online marketplaces can shield enterprises from vulnerabilities. A 2017 study⁷³ based on a large-scale survey of firms in the EU reveals

⁶⁷ While the well-known US companies Amazon and eBay are the leading marketplaces in most of the EU Member States, the AliExpress platform, (owned by the Chinese players Alibaba) is growing very fast, especially in Central Eastern European countries. Only in a limited number of Member States, national players (such as Allegro in Poland or Otto in Germany) rank high when it comes to number of visitors; they are, however, mainly focused on the domestic market, and mostly unknown beyond their national border. Ecommerce Europe (2018), European Ecommerce Report 2018. Available at: <https://www.haendlerbund.de/de/downloads/e-commerce-europe/european-e-commerce-report-2018.pdf>, <https://www.ecommerce-europe.eu/research/e-commerce-europe-reports/>.

⁶⁸ Dondena, CASE, IEB & PwC (2017), Literature review on taxation, entrepreneurship and collaborative economy, p. 33. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_paper_70.pdf.

⁶⁹ European Commission (2018), Proposal Regulation transparency fairness online intermediation services SWD 138 Part 2 pp. 70-71. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2018:0138:FIN>.

⁷⁰ Amazon business model encompasses both direct sales through its online retail platform, as well as third-party sales intermediated by Amazon acting as an online marketplace.

⁷¹ Duch-Brown (2017), The Competitive Landscape of Online Platforms, p. 29. Available online at: <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/competitive-landscape-online-platforms>.

⁷² Eurostat (2020), E-commerce statistics 2019. Dataset code: isoc_ec_eseln2. Last consulted on 16 March 2020. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce_statistics.

⁷³ Coad & Duch-Brown (2017), Barriers to European Cross-border e-Commerce. Available at: <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/barriers-european-cross-border-e-commerce>.

that enterprises that sell online via large platforms are less impacted by financial and market barriers, such as delivery costs, security of payments and dealing with foreign taxation⁷⁴. The same study points out that firms selling through platforms (especially large platforms) tend to have a higher share of online sales⁷⁵. This result serves as additional evidence reinforcing the takeaway that using e-commerce platforms reduces some of the barriers that enterprises may otherwise face when selling online.

Online platforms can also be gateways for expanding e-commerce activities to new markets. They play a role in the 'internationalisation' strategy of enterprises seeking to expand their e-commerce activities across borders. A 2019 research paper notes that relying on online platforms can be especially useful for SMEs in the market entry phase. Platforms thrive on market fragmentation. They help EU businesses overcome cross-border barriers and build visibility in a new market. Well-established online platforms can offer services that are trusted by local consumers (for instance, timely delivery services, secure payments, customer services), dispelling any scepticism that consumers may have when it comes to unknown or lesser known e-retailers⁷⁶. The role of platforms, however, gradually become less important when online retailers improve their position in a certain market and may seek to provide more customised services to their consumers.

Platforms have risen in prominence not only because they make it easier for sellers and buyers to connect, but also thanks to the services offered to their business clients to overcome some of the persistent barriers to e-commerce and operate seamlessly in the internal market (see Section 2.2). As such, e-retailers using e-commerce platforms can access, depending on the platform, services such as delivery, storage, advertising, invoicing, and information about the taxation systems in different European countries⁷⁷. In order to further streamline order processes, some platforms also offer 'fulfilment' services, which include storage, packing services, delivery, and customer services, essentially following an order from when it is placed to when the customer receives it⁷⁸.

The e-commerce sector inquiry also stresses the pivotal role that marketplaces play as a sales channel particularly for SMEs, through the access that they offer and the curtailing of upfront, fixed costs that would be needed for smaller retailers to set up their own channel for online sales. In addition, the inquiry also notes that small and medium-sized retailers complete a higher share of their total sales via marketplaces compared with large retailers⁷⁹. By lowering barriers to (cross-border) e-commerce, online platforms are effectively helping to build the EU Digital Single Market.

For consumers, trust and security concerns play an important role when buying online. Such concerns can be mitigated by ensuring, inter alia, a secure payment system, clear policies on data privacy and availability of information on e-sellers – a trustworthy framework featuring such elements can effectively drive the purchasing decision of consumers⁸⁰. This is where the benefits of e-commerce

⁷⁴ Financial barriers include the following: Delivery costs are too high, Payments from other countries are not secured enough, Dealing with foreign taxation is too complicated or too costly. Market barriers include the following: Your suppliers restrict or forbid you to sell abroad, Your suppliers do not allow you to use third platform to sell your products and/or services, Your suppliers request you to sell abroad at a different price, Your products and/or services are specific to your local market. For further details, please see: Coad & Duch-Brown (2017), Barriers to European Cross-border e-Commerce. Available at: <https://ec.europa.eu/irc/en/publication/eur-scientific-and-technical-research-reports/barriers-european-cross-border-e-commerce>.

⁷⁵ Please see Note 73, p. 24.

⁷⁶ Hanell, Nordman, Tolstoy & Ozbek (2019), "It's a new game out there": e-commerce in internationalising retail SMEs, International Marketing Review. Available at: <https://www.emerald.com/insight/content/doi/10.1108/IMR-03-2018-0107/full/html>.

⁷⁷ This is the case, for instance with Amazon Germany. The range of services is briefly presented online. For further details please see: <https://services.amazon.de/programme/online-verkaufen/merkmale-und-vorteile.html> last consulted on 16 March 2020.

⁷⁸ Please see for instance: Chamber of Commerce (n.d.), Best Order Fulfilment Services – 2020, last consulted on 16 March 2020, available at: <https://www.chamberofcommerce.org/best-order-fulfillment-services>.

⁷⁹ Please see Note 29, p. 229.

⁸⁰ Azam *et al.* (2012), Consumers' E-commerce acceptance model. Available at: <https://ieeexplore.ieee.org/abstract/document/6226086>.

platforms become evident from the consumer standpoint: platforms can effectively bridge the trust gap and provide a framework for online purchasing that meets the needs of consumers and addresses their concerns.

Online consumption has come to rely significantly on digital intermediaries. According to a 2015 study, as much as 60% of the private consumption and 30% of the public consumption of goods and services in the EU digital economy is made possible by online intermediaries⁸¹. A study on the online behaviour of consumers in Germany reveals that, when it comes to online shopping, German consumers have a clear preference for large e-commerce platforms. Consumers spend over 65% of the time dedicated to online shopping on Amazon and eBay (for both direct sales and marketplaces)⁸². Additional research on the preferences of online consumers echoes these findings. Based on a sample of online consumers from Germany, Poland, Spain and the UK, the research finds that 71% of consumers prefer buying online through marketplaces that both sell directly and allow third-party suppliers to sell on the platform⁸³.

3.2. Market power

Network effects coupled with significant economies of scale and scope are powering the rise of online platforms. By bringing together a multitude of suppliers and myriad consumers, digital marketplaces create a two-sided market where suppliers benefit from a large consumer base and consumers enjoy a wide range of products and services from a variety of sellers in what is essentially a 'one-stop shop'. More consumers attract more sellers who can cater to higher demand, and more sellers on the platform bring more competition and more choice to the benefit of consumers, who will then join in higher numbers⁸⁴. In this context, established e-commerce platforms can support additional users at decreasing costs, thus benefiting from economies of scale. Finally, online platforms have an advantage in terms of know-how and user base in order to expand to new market segments, diversify the types of goods and services offered or even attract new consumer segments by relying on user behaviour data generated by existing users, thus achieving economies of scope as well⁸⁵.

Network effects and economies of scale and scope nonetheless have a detrimental side. The rapid developments of the last two decades have seen the rise of successful online marketplaces that have come to represent a very significant portion of e-commerce. Their strong position in the market may raise entry barriers for new competing platforms and put small retailers in a disadvantaged position⁸⁶.

The market power enjoyed by large e-commerce platforms may allow them to extract significant value from their users. The access prices charged by the platforms are very much linked to the cross-side network effects that also help them thrive. Either sellers or buyers or both could be charged a fee for using the platform⁸⁷; such fees are most of the time charged to the sellers, and can be either fixed or

⁸¹ Copenhagen Economics (2015), *Online Intermediaries: Impact on the EU economy 2015*, p. 9. Available at: <https://www.copenhageneconomics.com/publications/publication/online-intermediaries-impact-on-the-eu-economy>.

⁸² EY (2018), *Digital Shopping Index: Winners and losers in the battle for digital consumers' attention*, p.7. Last consulted on 16 March 2020. Available at: <https://www.ey-parthenon.de/publikationen/digital-shopping-index/>.

⁸³ Lupianez-Villanueva *et al.* (2018), *Behavioural Study on the Transparency of Online Platforms*, p. 162. Available at: https://ec.europa.eu/info/sites/info/files/transparency_of_platforms-study-final-report_en.pdf.

⁸⁴ For a lengthier discussion on network effects, please see Note 73, pp. 4-5.

⁸⁵ Dittrich (2018), *Online platforms and how to regulate them - An EU Overview*, Jacques Delors Institute, Berlin. Available at: http://hertieschool-f4e6.kxcdn.com/fileadmin/user_upload/20180614_OnlinePlatformsandHowtoRegulateThem-Dittrich-June2018-4-1.pdf.

⁸⁶ OECD (2019), *Implications of E-commerce for Competition Policy - Background Note*, p. 30. Last consulted on 16 March 2020. Available at: [https://one.oecd.org/document/DAF/COMP\(2018\)3/en/pdf](https://one.oecd.org/document/DAF/COMP(2018)3/en/pdf).

⁸⁷ Martens (2016), *An Economic policy Perspective on Online Platforms*. Available at: <https://ec.europa.eu/irc/en/publication/eur-scientific-and-technical-research-reports/economic-policy-perspective-online-platforms>.

variable, based on the frequency and amount of sales. The adoption of such a fee system is facilitated by the fact that (i) retailers using the platform benefit from entering an existing structure for matching their supply with consumers' needs, without the higher upfront costs of setting up an own independent e-shop, and (ii) consumers may be more enticed to join a 'free' service where no fee is charged directly to them (though at any rate, at least part of the costs to use the platform are ultimately passed on to consumers). In the context of market concentration, the fees charged by platforms can, however, pose a major burden on small retailers. One example in this direction is Amazon passing on the entire digital services tax to retailers in France and Italy (see discussion in Section 3.5).

In the business-to-business (B2B) relationship between marketplaces and e-retailers, several unfair trade practices can become apparent due to the mismatch in bargaining power between parties. A public consultation run by the European Commission between September 2015 and December 2016 revealed the most frequent issues encountered by suppliers when dealing with e-commerce platforms:⁸⁸ i) issues with terms and conditions and how these are applied by platforms (notably, sellers pointed to having the possibility to negotiate the terms and conditions); ii) sellers being refused access to platform services without accepting specific restrictions; iii) competition from the platform's own services, putting third-party retailers selling on the platform at a disadvantage; and iv) a general lack of transparency. In addition, about half of the European SMEs using an online marketplace do not get the data they need about their customers (53%)⁸⁹. Importantly, the consultation informed the now adopted new Regulation concerning platform-to-business (P2B) relations⁹⁰, which entered into force in July 2019. As such, some of the issues flagged by business users of platforms have been addressed by the EU legislator. However, the effectiveness and impact of this measure must be monitored to ensure the proper approach is in place (see Section 4.1).

Beyond the impact on competitors and e-retailers, consumers may also find themselves disadvantaged vis-à-vis platforms. There is a certain level of information asymmetry between the two parties that can influence the purchasing decisions made by consumers. Making choices implies effort and time for comparing different options against a set of criteria. Consumers are generally prone to looking for short-cuts to reduce such cognitive efforts and the time spent on deciding. In this regard, rankings and default settings for search outputs can steer the purchase decision, as customers do rely on the popularity of a product or on its placement in the search output. A study of the behaviour of consumers online highlighted that consumers are generally more interested in speed and convenience when buying online; as such, the rank of products in search outputs and the reviews a product has, for instance, are important factors in the purchase decision⁹¹.

3.3. Illicit trade, unsafe products

European consumers have experienced multiple issues when it comes to illegal content online. According to a Flash Eurobarometer carried out in 2018, the majority of Europeans believe that the internet is not safe for its users and more should be done to limit the diffusion of illegal content on the web. More than 40% of Europeans surfing the web encountered problems such as fraud, subscription

⁸⁸ European Commission (2016), Online Platforms Public Consultation. Last consulted on 16 March 2020. Available at: <https://ec.europa.eu/digital-single-market/en/news/results-public-consultation-regulatory-environment-platforms-online-intermediaries-data-and>.

⁸⁹ Please see Note 21.

⁹⁰ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

⁹¹ Please see Note 83, pp. 18, 45.

traps, or other illegal commercial practices; another 27% were faced with issues of counterfeit goods; and 26% came across pirated content⁹².

In 2016, counterfeit and pirated goods were estimated to represent 3.3% of world trade (or \$509 billion)⁹³. In the EU, the share is even greater: 6.8% of imports⁹⁴ in 2016 were estimated to be counterfeit and pirated goods (amounting to approximately €121 billion). Even more striking, the numbers are on the rise compared with an earlier analysis based on data from 2013, which suggested that counterfeit and pirated goods represented 2.5% of world trade (or \$461 billion) and 5% of EU imports (or €85 billion)⁹⁵.

Two main reasons for concern arise from these data. First, the issue appears to be persisting and growing significantly, based on the comparable data presented by the OECD and the European Union Intellectual Property Office (EUIPO). The impact on the economy is substantial, especially considering the role of information and intangibles such as intellectual property in the knowledge-based economy nowadays. Illicit trade affects both product and service providers, as well as consumers. Second, counterfeit and pirated goods affect developed countries to a greater extent (as shown by the share of such goods in trade relations), bringing questions about how to improve enforcement and detection given the novel ways in which illicit trade flows may go undetected and negatively impact consumer protection.

Illicit trade can proliferate with the expansion of online trade. The supply of fake name brands has been greatly facilitated by e-commerce channels and has seen the rise of ‘dropshipping’ as a business model particularly used by fake name-brand suppliers: sellers offering products without actually stocking or owning the products themselves, but relying on third-party suppliers that ship directly to consumers⁹⁶. These developments are reinforced especially as small parcel delivery is becoming ever more popular in the framework of e-commerce. Using small parcels to trade fake items is, on the one hand, profitable and less risky for sellers, as the risk of detection decreases the more the volume of deliveries grows; on the other hand, it brings high enforcement costs, which are hardly sustainable in light of the small amounts seized. These effects combined seem indeed to be giving illicit traders momentum in their activities: the OECD and EUIPO note that counterfeit and pirated goods trafficked through small parcels is growing, as shown by seizures made. Shipments are made through regular postal services or express delivery, making detection very difficult and costly⁹⁷.

Detection is made even more difficult as illicit trade affects most categories of goods, from luxury products to day-to-day consumption goods. Out of the total value of seizures in 2016, footwear, clothing and leather goods take up the highest shares (22%, 16%, and 13% respectively; see Figure 5)⁹⁸. The distribution of fake goods traded by industry overlaps quite well with the goods most often bought online: in the EU, clothing and sports goods take up the highest share of online purchases according

⁹² European Commission (2018), Flash Eurobarometer 469 – Illegal content online, pp. 23-25. Available at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/flash/surveyky/2201>.

⁹³ OECD/EUIPO (2019), Trends in Trade in Counterfeit and Pirated Goods. Available at: <https://doi.org/10.1787/q2q9f533-en>.

⁹⁴ Please consider that these figures are most likely underestimating the magnitude of the problem, as they are based on customs seizure observations, and do not include domestically produced and consumed counterfeit and pirated products; nor do they include pirated digital content on the Internet.

⁹⁵ OECD/EUIPO (2016), Trade in Counterfeit and Pirate Goods: Mapping the Economic Impact, OECD Publishing Paris. Available at: <https://doi.org/10.1787/9789264252653-en>.

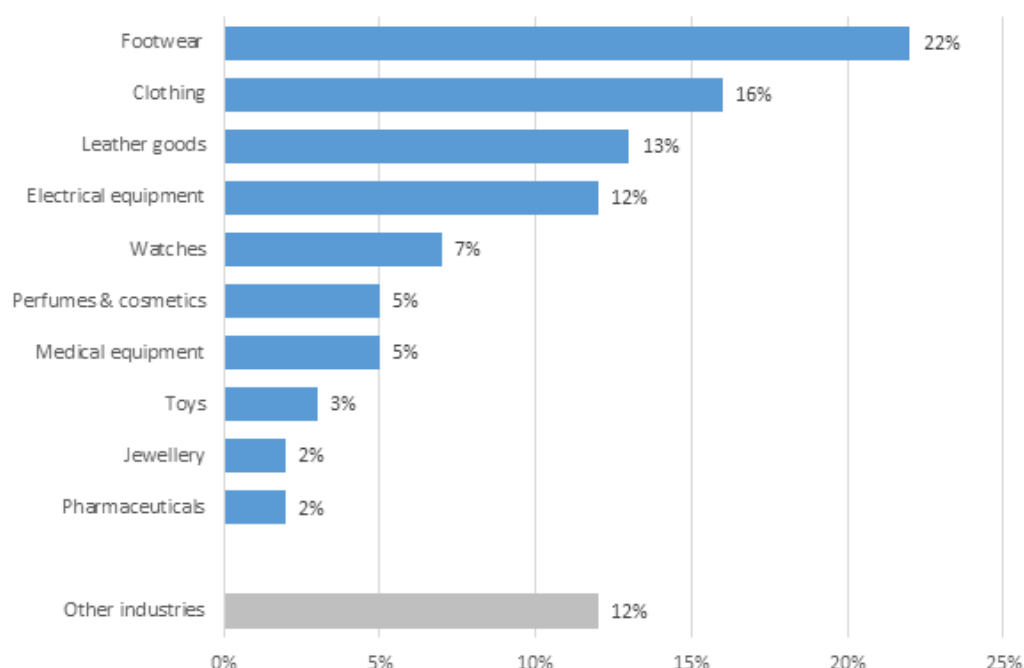
⁹⁶ Frau-Meigs (2018), Societal costs of “fake news” in the Digital Single Market, Study for the IMCO committee, p. 17. Available at: [https://europarl.europa.eu/RegData/etudes/STUD/2018/626087/IPOL_STU\(2018\)626087_EN.pdf](https://europarl.europa.eu/RegData/etudes/STUD/2018/626087/IPOL_STU(2018)626087_EN.pdf).

⁹⁷ Please see Note 93.

⁹⁸ OECD (n.d.), Trade in fake goods is now 3.3% of world trade and rising. Last consulted on 16 March 2020. Available at: <http://www.oecd.org/newsroom/trade-in-fake-goods-is-now-33-of-world-trade-and-rising.htm>.

to Eurostat⁹⁹. Detection and removal from the market of fake goods is thus problematic online and very strenuous and costly once the online order has been placed and the goods are passed along in the delivery system.

Figure 5: Industries most affected by counterfeit and pirated goods (share of total value of seizures, 2016)



Source: OECD/EUIPO (2016)¹⁰⁰

Illicit trade affects consumers and retailers alike. Consumers risk being deceived when making online purchases of goods that are in fact counterfeit and are confronted with issues like the low quality of the products and even safety concerns. In the EU, between 2010 and 2017, 97% of the seized counterfeit goods reported as dangerous posed a serious risk to consumers. In particular, child safety is put in danger; 80% of the goods reported to be dangerous and counterfeit in the EU were items destined for children like toys and children's clothing¹⁰¹. On the supply side, retailers are faced with unfair competition from illicit traders in the form of lower prices that attract consumers and a lack of compliance with basic standards such as those related to safety.

3.4. Energy and the environment

As digital developments become pervasive in a multitude of fields, including commercial activities, the environmental costs stemming from the energy needed to sustain the digital economy are gaining prominence. In particular, as data generated and used to power e-commerce continues to multiply, the relevance of data centres becomes crucial. While new ICT technologies are expected to help reduce

⁹⁹ Eurostat (2020), E-commerce statistics for individuals 2019. Last consulted on 16 March 2020. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals#Most_popular_online_purchases.

¹⁰⁰ Please see Note 95.

¹⁰¹ EUIPO (2019), Qualitative Study on Risks Posed by Counterfeits to Consumers, p. 5. Available at: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_Risks_Posed_by_Counterfeits_to_Consumers_Study.pdf.

energy consumption in other sectors such as buildings (heating and lighting)¹⁰², the expansion of the ICT sector itself should be carefully considered. Electricity demand associated with the ICT sector is projected to grow significantly, raising questions about how to best prepare for the increased demand and how to sustainably source the needed energy.

Estimates show that the ICT sector, including data centres, is responsible for 7% of global electricity consumption. Given the expansion of the sector, this share could grow to 13% of global electricity consumption by 2030¹⁰³. Data from the International Energy Agency shows that, globally, data centres consumed approximately 194 terawatt hours (TWh) of electricity in 2014, amounting to around 1% of total electricity demand¹⁰⁴. Projected growth in the electricity consumption of data centres varies, depending on the increase in their activity but also on any potential efficiency gains. As such, some forecasts suggest that data centres will account for 3% of global electricity consumption by 2030¹⁰⁵, while others see this share going as high as 8% by the same year¹⁰⁶.

Against this background, it is clear that the energy consumption of the ICT sector, and data centres in particular, is becoming central to the discussion on any externalities linked to e-commerce activities. Energy consumption needs to be seen also in conjunction with the environmental impacts of electricity generation. The ICT sector accounts for approximately 2% of global CO₂ emissions, the same share that is generated by the aviation sector. In addition, forecasts suggest that data centres, compared with the rest of the ICT sector, will have the highest rate of growth in emissions¹⁰⁷. To ensure sustainable development of the e-commerce sector and to achieve the EU energy and climate targets¹⁰⁸, such costs and externalities need to be taken into account.

3.5. Digital taxation

As online platforms play a progressively larger role in e-commerce, the new business models that they introduce in the economy are raising questions about the fitness for purpose of the current corporate tax rules. It has become very easy for businesses that operate mainly digitally to be active in several countries with no physical presence (the so-called scale without mass). Yet, direct taxation rules (i.e. taxes on corporate profits) are based on permanent establishment, specifically the physical presence of a business in a certain country¹⁰⁹. Therefore, the central role played by data and users in the EU economy and the increasing reliance on intangible assets characterising online platforms pose questions on how and where value is created, and how and where profits should be taxed¹¹⁰.

¹⁰² Bio Intelligence Services, European Business Council for Sustainable Energy, Fraunhofer IZM (2008), Impacts of Information and Communication Technologies on Energy Efficiency, European Commission DG INFSO. Available at: https://ec.europa.eu/information_society/activities/sustainable_growth/docs/studies/2008/2008_bio_ict4ee-summary_en.pdf.

¹⁰³ Avgerinou *et al.* (2017), Trends in Data Centre Energy Consumption under the European Code of Conduct for Data Energy Efficiency. Available at: <https://www.mdpi.com/1996-1073/10/10/1470>.

¹⁰⁴ IEA (2017), Digitalization and energy, IEA Publications, Cedex, Paris. Available at: <https://www.iea.org/reports/digitalisation-and-energy>.

¹⁰⁵ Ibid.

¹⁰⁶ Nature (2018), How to stop data centres from gobbling up the world's electricity. Last consulted on 16 March 2020. Available at: <https://www.nature.com/articles/d41586-018-06610-y>.

¹⁰⁷ Please see Note 103.

¹⁰⁸ The following EU-wide targets have to be achieved by 2030: cutting greenhouse gas emissions by 40% compared to 1990 levels, relying on renewables for no less than 32% of the total final energy consumption, and improving energy efficiency by 32.5% compared to 1990 levels.

¹⁰⁹ If one excludes issues of tax evasion, the mismatch affects only direct taxation rules, as companies with a digital business model and traditional brick-and-mortar companies are still subject to the same VAT regime.

¹¹⁰ Lennard (2018), Act of creation: the OECD/G20 test of "Value Creation" as a basis for taxing rights and its relevance to developing countries, Transnational Corporations, Vol 25, No 3 Special Issue.

The mismatch between direct taxation rules and the ways in which digital businesses operate have triggered a discussion on how such rules can be adjusted to the digital context. Digital taxation issues can have a twofold impact: on the one hand, countries confront unrealised tax revenues, as they are unable to factor in the digital presence of multinational businesses; on the other hand, in the absence of a coordinated approach across countries, businesses may be negatively impacted by tax uncertainty and even face instances of double taxation.

With an ongoing international debate on the topic taking place within the framework of the OECD/G20 base erosion and profit sharing (BEPS) initiative¹¹¹, some countries have already resorted to unilateral measures in the field of digital taxation. The European Commission itself put forward two proposals for taxation in the digital age – with measures for both the short term and the long term – but consensus has proven difficult to achieve. Against this background, France introduced in July 2019 a 3% Digital Services Tax, levied on the gross income from digital services of large, global companies operating in France¹¹². The tax was put forward to try to correct for some of the imbalances between taxation rules and evolving business models, while protecting smaller digital businesses¹¹³. Even so, in its application so far, the burden might actually be borne by smaller players in the market. For instance, Amazon, one of the companies clearly falling under the scope of the new French legislation, has adjusted its pricing scheme for marketplace retailers to respond to the new tax. As such, retailers operating on the marketplace of Amazon France face fees that are 3% higher than those charged on other Amazon marketplaces in the EU (namely Germany, Italy, Spain, and the UK)¹¹⁴. The situation is poised to repeat itself in Italy, where a 3% Digital Service Tax has been introduced as well, effective as of January 2020. Amazon will increase the fees applicable to marketplace retailers on Amazon IT in the same way as done in France¹¹⁵.

The example of Amazon and the digital services taxes in France and Italy beg for a reflection on a number of implications for the internal market and for EU consumers. Fragmentation in the tax measures implemented in different countries can affect the functioning of the internal market and put an additional burden on businesses operating across borders, especially if one considers that other Member States are also planning to introduce new taxes tailored for digital services¹¹⁶. In addition, the move by Amazon may be followed by other large digital companies, thus generating negative spillovers precisely on the more vulnerable categories of businesses in e-commerce, such as SMEs and small retailers. The full pass-on effects may eventually hit EU consumers, who will just be requested to pay more for any product or service they purchase online.

¹¹¹ For further details please see: OECD (n.d.); Action 1 Tax Challenges Arising from Digitalisation. Last consulted on 16 March 2020. Available at: oecd.org/tax/beps/beps-actions/action1/.

¹¹² The digital services taxes adopted in France and Italy are presented here as examples of unilateral taxation measures that may become more common given that taxation in the digital era is a prominent issue on policy agendas around the world. This study limits itself to presenting the different implications that such measures may have for e-commerce businesses. Analysing the level of the tax rate and/or the tax base adopted is beyond the scope of this study.

¹¹³ The tax applies to companies with global revenues of €750m per year or more and revenues realised in the country above €25m per year.

¹¹⁴ Amazon France referral fees are 3% higher than on Amazon UK, Germany, Spain and Italy to reflect the cost of the French specific 3% Digital Services Tax: if a referral fee on Amazon UK, Germany, Spain and Italy is 15.00%, on Amazon FR it is 15.45%. For further details, please see: Amazon seller centre Europe (2020), Selling on Amazon Fee schedule. Last consulted on 12 March 2020. Available at: https://sellercentral.amazon.fr/gp/help/external/200336920?language=en_US&ref=efph_200336920_cont_200500100.

¹¹⁵ “With the introduction of the 3% digital services tax in Italy, we will adjust our referral fee rates on Amazon.it accordingly, starting April 1, 2020. For example, on an item for which the referral fee is currently 15.00%, the new referral fee will be 15.45%, resulting in an increase of 3% in the referral fee amount. If there are further changes to the digital services tax, the referral fee will be adjusted accordingly.” Please see note 114.

¹¹⁶ For an overview see of similar measures planned or already introduced in other Member States, please see: KPMG (2019), Taxation of the digitalized economy. Developments Summary, available at: <https://tax.kpmg.us/content/dam/tax/en/pdfs/2019/digitalized-economy-taxation-developments-summary.pdf>.

4. SOLUTIONS

KEY FINDINGS

Ensuring the proper and timely implementation of existing EU legislation is essential to improve the framework in which e-commerce activities are taking place in the EU, while focusing on new interventions to address remaining problems. Through the 'review clauses' included in the recently adopted regulations and directives, the European Parliament can play a crucial part in tracking the implementation of the measures impacting e-commerce and assessing whether new actions are necessary.

To remove the existing regulatory barriers to the functioning of the Digital Single Market for copyrighted content, three options can be considered:

- Extending the scope of application of the Geo-blocking Regulation to the online provisions of digital creative content;
- Allowing competition law to prevail over copyright law to integrate the internal market, thus ensuring that contractual restrictions to passive sales of digital copyrighted content as well as any measure having a similar object or effect would be prohibited; and
- Introducing a unitary copyright title and a European copyright code that would replace national copyright legislation and achieve the complete unification of EU copyright law.

As e-commerce platforms play a larger role in the sector, it is essential to take actions contributing to their sustainability. These include:

- Considering the need for stricter regulation of digital platforms, in addition to the current provisions of the P2B Regulation, and/or reforming competition rules in order to secure fair and sustainable relations between platforms and business users;
- Ensuring there is a framework for liability and transparency to support consumer protection and consumer rights and exploring the role that digital nudging could play to improve online consumption outcomes;
- Analysing how new technologies such as blockchain, with a huge potential for security and authentication, can be used to fight illicit trade online and to ultimately improve consumer protection and safety;
- Supporting the use of electricity from renewable sources to reduce the environmental impact of the growing number and size of data centres; and
- Ensuring that digital taxation measures do not hinder cross-border e-commerce, by i) limiting legal and regulatory uncertainty, ii) avoiding unnecessary increases in compliance costs, and iii) adopting new rules that are proportionate in order to avoid negative effects on small and innovative digital companies.

Addressing the remaining barriers to e-commerce and reducing the emerging costs linked to the platform economy can unlock more benefits for EU businesses and consumers. The timing is also crucial. In the period between the need for intervention being identified and legislation being passed and starting to apply, potential benefits are not realised due to delayed action. Based on the 2015 ambitions of the Commission in the area of e-commerce, which have not been entirely fulfilled, the foregone benefits have been estimated at €204 billion per year¹¹⁷. This metric (also known as the 'cost of slow Europe' when compounding it over the length of the legislative process) signals both the importance of taking appropriate measures and the need to implement them in a timely manner, within certain limits imposed by the democratic process of adopting new legislation. To fully reap the benefits of e-commerce in the EU, a comprehensive and forward-looking framework of actions needs to be considered in order to foster cross-border e-commerce, facilitate cross-border access to copyrighted content and improve the sustainability of digital platforms. This section of the report identifies the main areas of intervention and discusses possible solutions.

4.1. Fostering cross-border e-commerce

While looking ahead at future actions that can be implemented to support e-commerce, and in particular, to enhance online cross-border transactions, it is important to take stock of the measures introduced in recent years to tackle some of the most prominent problems brought up by consumers and suppliers alike. Table 2 provides an overview of the relevant EU legislation in this sense¹¹⁸. Ensuring the proper and timely implementation of such measures is essential to improve the framework in which e-commerce activities are taking place in the EU, while focusing on new and better targeted interventions to address remaining problems.

Table 2: Overview of recent EU legislation supporting cross-border e-commerce

Legislation	Date of application	Aim/problems addressed	Scheduled review
Regulation on cross-border parcel delivery services ¹¹⁹	22 May 2018	Supports cross-border parcel delivery by improving the regulatory oversight and increasing price transparency of parcel delivery services	23 May 2020, afterwards, every five years
Geo-blocking Regulation ¹²⁰	3 December 2018	Addresses unjustified restrictions to cross-border sales and online shopping of goods and services faced by consumers due to the geographical location	23 March 2020, afterwards, every five years
Digital contract rules ¹²¹	Adopted on 20 May 2019; Member States	Harmonise key consumer contract law rules across the EU, improving transparency over	12 June 2024

¹¹⁷ Godel, Harms, Jones & Mantovani (2016), Reducing Costs and Barriers for Businesses in the Single Market, Study for the IMCO committee, p. 16. Available at: [https://europarl.europa.eu/RegData/etudes/STUD/2016/578966/IPOL_STU\(2016\)578966_EN.pdf](https://europarl.europa.eu/RegData/etudes/STUD/2016/578966/IPOL_STU(2016)578966_EN.pdf).

¹¹⁸ For an overview of additional measures contributing more generally to the Digital Single Market, please see: De Streel & Hocepić (2019), Contribution to growth: European Digital Single Market. Delivering improved rights for European citizens and businesses, Study for the IMCO committee. Available at: [https://europarl.europa.eu/RegData/etudes/STUD/2019/638395/IPOL_STU\(2019\)638395_EN.pdf](https://europarl.europa.eu/RegData/etudes/STUD/2019/638395/IPOL_STU(2019)638395_EN.pdf).

¹¹⁹ Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services.

¹²⁰ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.

¹²¹ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services; Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on

Legislation	Date of application	Aim/problems addressed	Scheduled review
Directive on better enforcement and modernisation of EU consumer protection ¹²²	are to transpose the rules by the end of 2021	consumer rights, providing a higher level of consumer protection, and increasing legal certainty for both consumers and traders	
	Adopted on 27 November 2019; Member States are to transpose the rules by 28 May 2022	Aims to enhance consumer protection by introducing more penalties for violations of EU consumer laws, strengthening consumer rights, improving transparency online, and by addressing the issue of dual quality of consumer goods	28 May 2024
Regulation on platform-to-business relations (P2B Regulation) ¹²³	12 July 2020	Aims to increase transparency and fairness in the relations between businesses and online platforms	13 January 2022; afterwards every three years

Source: Author's own elaboration

Notably, some of the measures listed in Table 2 aim to improve transparency between the different e-commerce parties: consumers, traders, delivery service providers and platforms. While transparency is very much needed, it is not a silver bullet against problems such as unfair trade practices, refusal of access, inadequate delivery services, etc. Some of the pieces of legislation laid out in Table 2 could be considered initial interventions subject to further refining over time. In fact, they all include 'review clauses' and it is through these clauses that the European Parliament can play a crucial part in tracking the implementation of the measures and assessing whether new actions are necessary. The review clauses of the three regulations are of particular interest in this regard: for all three pieces of legislation, the review is scheduled just two years after the adoption of the act. More specifically, the reviews of the Geo-blocking Regulation and the Regulation on cross-border parcel delivery services are already due this spring (2020), and the P2B Regulation will be reviewed at the beginning of 2022. This is an excellent opportunity to minimise the costs of slow Europe and remove the remaining barriers to e-commerce, thus making it easier for EU companies, and especially SMEs, to go cross-border and reduce their dependency on digital platforms.

The upcoming review of the Geo-blocking Regulation is expected to focus overall on how (and if) it has facilitated cross-border e-commerce and what additional actions are to be taken. Specifically, it should analyse whether to lift the current restrictions on the application of the regulation to the provision of access to and use of digital copyright-protected works¹²⁴. The review should also examine whether, for services in fields like transport and audiovisual, other remaining unjustified restrictions based on nationality, place of residence or place of establishment should be removed. Recent data (2019, see

certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.

¹²² Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

¹²³ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

¹²⁴ See article 4(1), point b; article 9(2), and Statement by the Commission attached to the text of the geo-blocking Regulation (Regulation (EU) 2018/302). For an additional discussion on solutions regarding geo-blocking and copyright, please see Section 4.2 Facilitating cross-border access to digital content.

Section 2.3) show that more should be done to remove restrictions to cross-border access to digital content, as further discussed in Section 4.2. More generally, in 2018 estimated benefits from the Geo-blocking Regulation were expected to amount to €2.4 billion per year for online sales of goods and services, with a potential to grow to €6.8 billion in 2025¹²⁵. Such estimates should be considered against more recent, *ex post* data when reviewing the impact of this regulation.

The review of the Regulation on cross-border parcel delivery services will assess the contribution of the legislation in the following areas:¹²⁶ i) overall cross-border parcel delivery levels and e-commerce; ii) territorial cohesion, namely whether it has enhanced cross-border delivery services and rendered such services more affordable especially in more remote locations; iii) the administrative impact of the regulation on national authorities; and iv) links with other initiatives, particularly consumer protection. Data collected by Eurostat shows that in 2019 the higher costs of delivering or returning products are the main barriers to e-commerce faced by EU businesses, and speed of delivery is a central problem detected by consumers (see Section 2.2). This is no surprise if one considers that the Regulation on cross-border parcel delivery services can only impact quality and prices for such services in the long term¹²⁷. Its provisions support more transparency vis-à-vis national regulators and, to some extent consumers. More transparency should, in turn, increase competition among different providers. Enhanced competition can in the long term lead to better quality and lower prices as consumers become more aware of the different options available and service providers compete for customers. When reviewing the legislation, a more incisive approach to bring immediate benefits and reduce the costs of slow Europe could be considered.

Finally, the next year and a half will be crucial for determining how and if to proceed beyond the rules on transparency and fairness that the P2B Regulation includes at the moment. The review clause certainly leaves room for such reflections. In particular, the review should contain an assessment of the compliance of platforms with the new measures and, more importantly, an analysis of the problems ensuing from the market and bargaining power imbalance between platforms and business users and whether further interventions are called for¹²⁸. Problems to be further investigated include, *inter alia*, competition issues between business users and platforms providing similar goods or services, unfair commercial practices, abuse of economic dependence and other potential imbalances. Interestingly, all these elements were already identified by several stakeholders consulted by the Commission to draft the P2B Regulation proposal and have only been addressed to a limited degree by the enacted regulation. The review needs to establish to what extent the provisions of the regulation will have achieved a more trustworthy environment and what the next steps are (further discussed in Section 4.3).

Any future actions to be undertaken to enhance the e-commerce framework in the EU need to be formulated in a coherent and concerted approach. Against this background, as discussed in the next sections, more can be done when it comes to reform of EU copyright rules and to enhance the sustainability of e-commerce activities in the age of digital platforms.

¹²⁵ Marcus, Petropoulos & Yeung (2019), Contribution to Growth: The European Digital Single Market. Delivering economic benefits for citizens and businesses, Study for the IMCO committee, pp. 44-45.
Available at: [https://europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2019\)631044](https://europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2019)631044).

¹²⁶ Article 11 of the Regulation on cross-border parcel delivery services (Regulation (EU) 2018/644).

¹²⁷ Please see Note 57, Simonelli (2016).

¹²⁸ Please see recital 49 and article 18 of the P2B Regulation (Regulation (EU) 2019/1150).

4.2. Facilitating cross-border access to digital content

The online provision of copyrighted content is still the ‘elephant in the room’, i.e. the largest and most promising as well as the most geo-blocked and fragmented segment of the Digital Single Market¹²⁹. The Juncker Commission did not entirely find “the courage to break down national silos”¹³⁰; and the European Parliament did not manage to fully keep the praiseworthy resolution of dismantling the barriers affecting e-commerce and ensuring that EU consumers are treated equally by online sellers, irrespective of their nationality or country of residence¹³¹.

The long-awaited modernisation of EU copyright rules left the principle of territoriality largely untouched, thus preserving the territorial licensing schemes typically fragmenting the Digital Single Market for copyrighted content. There are two exceptions, limited in scope: i) the new Directive on online broadcasting and retransmission¹³², which facilitates the cross-border provision of certain ancillary online services such as simulcasting and catch-up TV of news and current affairs programmes or own productions of broadcasters; and ii) the cross-border Portability Regulation¹³³, which allows subscribers who are temporarily in a Member State different from their country of residence to keep on accessing the online content service to which they have subscribed in their country. By contrast, for the time being, the Geo-blocking Regulation¹³⁴ does not apply to the online provision of copyrighted content, thus missing an excellent opportunity to substantially improve the functioning of the Digital Single Market.

In a similar vein, although contractual limitations to passive sales are anti-competitive ‘by object’¹³⁵ and therefore prohibited under EU competition law, the competition case on cross-border access to pay-TV¹³⁶ seems to leave untouched the freedom of right holders to license their content on a territorially exclusive basis¹³⁷. In fact, while the parties committed not to include contractual restrictions to passive sales in their licensing agreements, such commitments are without prejudice to rights conferred under copyright law and to the rights of the parties to decide unilaterally to employ geo-blocking techniques¹³⁸. Hence, copyrighted works can still be distributed on a strict country-by-

¹²⁹ Please see Note 57.

¹³⁰ Juncker (2014), “A new start for Europe: my agenda for jobs, growth, fairness and democratic change”, Political Guidelines for the next European Commission. Last consulted on 16 March 2020. Available at: https://ec.europa.eu/commission/publications/president-junckers-political-guidelines_en.

¹³¹ European Parliament (2016), Resolution on “Towards a Digital Single Market Act” (2015/2147(INI)), P8 TA(2016)0009. Available at: https://europarl.europa.eu/doceo/document/TA-8-2016-0009_EN.html.

¹³² Directive (EU) 2019/789 of the European Parliament and of The Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0789&from=EN>.

¹³³ Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market. Available at: <https://eur-lex.europa.eu/eli/reg/2017/1128/oj>.

¹³⁴ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers’ nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC. Available at: <https://eur-lex.europa.eu/eli/reg/2018/302/oj>.

¹³⁵ Article 4 of the Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices. Available at: <https://eur-lex.europa.eu/eli/reg/2010/330/oj>.

¹³⁶ Summary of Commission Decision of 7 March 2019 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case AT.40023 — Cross-border access to pay-TV. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XC0409\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019XC0409(01)).

¹³⁷ Mazziotti & Simonelli (2016), “Another breach in the wall: copyright territoriality in Europe and its progressive erosion on the grounds of competition law”, Info, Emerald Group Publishing. Available at: <https://www.emerald.com/insight/content/doi/10.1108/info-06-2016-0026/full/html>.

¹³⁸ Intellectual property rights are special rights, protected by Article 17.2 of the EU Charter of Fundamental Rights.

country basis as a result of the territorially limited scope of the rights licensed to broadcasters (or other content suppliers). More specifically, even in the absence of an explicit contractual prohibition to cross-border passive sales (so no infringement of contract law), content suppliers are not in the position to respond to unsolicited requests coming from a consumer based in a Member State outside the scope of their license, as they would infringe copyright law in that country.

In this context, three different options would enable the removal of existing regulatory barriers to the functioning of the Digital Single Market for copyrighted content:

- *Lift geo-blocking.* As a part of the review process of the Geo-blocking Regulation envisaged in 2021, its scope of application should be extended to the online provision of digital creative content. This is the most actionable option, as it is explicitly mentioned in Article 9(2) of the regulation;
- *Allow competition law to prevail over copyright law.* To integrate the internal market, contractual restrictions to passive sales of digital copyrighted content should be forbidden together with any measure having similar object or effect, including restrictions stemming from copyright protection. This would lead to generalised cross-border access to digital creative content and would restrict the freedom of right holders to license their rights on a territorial basis. In the same way as the principle of free movement of goods prevails over the principle of territoriality in physical markets (as a result of the principle of exhaustion)¹³⁹, the freedom to provide online access to digital copyrighted content on an EU-wide basis would prevail over territoriality;
- *Introduce a unitary copyright title and a European copyright code.* The principle of territoriality would be repealed by reforming the EU copyright framework and adopting a regulation that would replace national copyright legislation, achieve the complete unification of EU copyright law and create a pan-European system of entitlements¹⁴⁰.

All options would be aligned with the spirit of Article 26 of the Treaty on the Functioning of the European Union, and with the work of the Court of Justice of the European Union, which over the past 20 years has progressively harmonised the EU copyright framework to remove differences that generate barriers to the free movement of copyrighted work across the EU¹⁴¹. All options would still allow right holders to differentiate their licenses based on, e.g. content language or other features (subtitles, dubbing, etc.), as currently done, for instance, by the book publishing industry¹⁴².

4.3. Sustainability of e-commerce in the age of platforms

This section discusses possible mitigation measures for the main risks (see Section 3) arising from the growth of e-commerce platforms, namely concentration of market power and relations with business users and consumers, illicit trade and unsafe products, the environmental impacts of data centres and taxation in the digital environment.

4.3.1. Towards an enhanced framework for P2B and P2C relations

Recent legislation adopted at the EU level seeks to improve transparency online, especially in the relationship between businesses and platforms, and consumers and platforms, as is the case for the

¹³⁹ See Article 4.2 of Directive 2001/29/EC (InfoSoc Directive).

¹⁴⁰ Please see Note 62; and Madiaga (2015), EU copyright reform: Revisiting the principle of territoriality, European Parliament Research Service.

¹⁴¹ Rosati (2019), Copyright and the Court of Justice of the European Union, Oxford Scholarship Online.

¹⁴² Hugenholtz & Poort (2019), Film financing in the Digital Single Market: Challenges to territoriality, IIC - International Review of Intellectual Property and Competition Law volume 51, pp. 167–186.

Directive on better enforcement and modernisation of EU consumer protection and the P2B Regulation (see Table 2). Enhanced transparency is a major step for improving P2B and platform-to-consumer (P2C) relations, but it is not enough.

As discussed in Section 3, platforms can rely on their significant bargaining power in relations with their business users. This may result in the adoption of unfair trade practices and abuse of economic dependence that put smaller traders at a disadvantage. Such abuse can hardly be addressed by relying on competition law for two main reasons. First, competition law only applies to abuses of dominant position¹⁴³. There is, however, still significant uncertainty about the definition of the market in the digital platform environment, which in turn makes it very hard to prove the dominance of platforms¹⁴⁴. In addition, platforms can have enough bargaining power even when they are not dominant *stricto sensu*. Second, competition law only intervenes *ex post*. The *ex post* application of competition rules is too slow and largely insufficient in the dynamic and innovative online environment where e-commerce businesses and platforms operate¹⁴⁵, and is likely to be ineffective when it comes to protecting SMEs, which are weaker from a financial standpoint and could be forced out of business well before an antitrust case is closed.

In this context, the P2B Regulation so far intervenes *ex ante* and regulates the interaction process between businesses and platforms; for instance, the regulation introduces mandatory notice periods for changes made by the platform to the terms and conditions and for terminating contracts with business users, as well as obligations related to the transparency of search outputs and rankings. Still, this may be, insufficient to provide effective protection to online traders and SMEs, which may continue to face unreasonable conditions for reaching their consumers through digital platforms. In this respect, as mentioned, the review of the P2B Regulation will provide both the opportunity and the duty of better securing fair and sustainable relations between platforms and business users. The need for stricter regulation of digital platforms and/or for reforming competition rules and enabling EU and national authorities to intervene *ex ante* should be carefully considered¹⁴⁶.

As consumers are increasingly relying on e-commerce platforms for their consumption, a sustainable framework for P2C relations should be put in place. Such a framework should include provisions on transparency, liability and enforcement. It could even consider a more proactive, enabling aspect: digital nudging¹⁴⁷. While rules on liability and transparency support consumer protection and consumer rights, digital nudging could go one step ahead and help improve online consumption outcomes.

¹⁴³ See article 102 of the Treaty on the Functioning of the European Union and corresponding national measures.

¹⁴⁴ See for instance: Holzweber (2017), Market Definition for Multi-Sided Platforms: A Legal Reappraisal, 40 World Competition, Issue 4, pp. 563–582; and Filistrucchi *et al.* (2013), Market Definition in Two-Sided Markets: Theory and Practice. TILEC Discussion Paper No. 2013-009. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2240850.

¹⁴⁵ Mandrescu (2019), Ex-ante competition law enforcement and online platforms – a tool with no (clear) instructions, CoRe Blog. Available at: <https://coreblog.lexxion.eu/ex-ante-competition-law-enforcement-and-online-platforms-a-tool-with-no-clear-instructions/>.

¹⁴⁶ Several national competition authorities are considering legal solutions to intervene *ex ante* and beyond abuses of dominant position when it comes to digital platforms. Please see for instance: van de Sanden & Beetsma (2019), Digitalisation, online platforms and competition law: an overview of regulatory developments in the Netherlands, Kluwer Competition Law Blog (2019). Available at: competitionlawblog.kluwercompetitionlaw.com/2019/12/02/digitalisation-online-platforms-and-competition-law-an-overview-of-regulatory-developments-in-the-netherlands-2019/; and Cafarra (2020), The UK's "other" big experiment: Regulating online platforms? VOX CEPR Policy Portal. Available at: <https://voxeu.org/content/uk-s-other-big-experiment-regulating-online-platforms>.

¹⁴⁷ Schneider, Weinmann & Brocke (2018), Digital Nudging: Guiding Online User Choices through Interface Design, Communications of the ACM. 61, pp. 67–73, Available at: <https://doi.org/10.1145/3213765>.

A behavioural study on online consumption¹⁴⁸ showed that effective interventions at the level of the website design of online shops can improve the shopping experience and limit the risk of incompatible purchases. The intervention can be as simple as showing additional warning messages and displaying information at the check-out stage to prompt consumers to review their choice one more time. Such nudges can prove to be especially useful for more vulnerable categories of consumers, such as the elderly, who might need additional information or prompts to ensure that their purchasing decision is optimal. It is not only the availability of information that plays an important part in purchasing decisions, but also the prominence of the information, its clarity and how the consumer's attention is drawn to it. Embedding the principles of transparency-by-design and transparency-by-default into how e-commerce platforms work could improve the user experience¹⁴⁹.

Digital nudging could eventually become a regulator's tool for supporting certain purchasing decisions. In traditional commerce, the labelling of food items, for instance, is increasingly used to show consumers the nutritional value of food items¹⁵⁰, while energy labels promote the purchasing of more efficient equipment¹⁵¹. The use of such nudges can be fostered on online platforms to guide the consumer towards goods or services that fulfil different criteria, adapting search results accordingly. This could create a virtuous cycle, whereby consumers opt for healthier and more environmentally friendly products and services, and online sellers are encouraged to offer more sustainable ones¹⁵². In Japan, the online marketplace Rakuten is taking steps in this direction. "Earth Mall with Rakuten" is a space within the marketplace dedicated to certified sustainable products. It has a dual approach, focused on both the supply side and consumers, providing information about sustainable consumption and lifestyle choices¹⁵³.

An enhanced framework for P2B and P2C relations should necessarily account for the opportunities and challenges stemming from artificial intelligence (AI). E-commerce platforms are increasingly using new AI-based technologies and big data to increase their performance and competitiveness, notably deep learning, voice and video analysis technology, image recognition technology, text analysis and natural language processing. Such technologies can be deployed to increase customer satisfaction and retention in e-commerce, and to provide more personalised services. Applications tested or already used include intelligent service robots (chatbots) and recommendation engines¹⁵⁴. While such technologies can increase efficiency and allow for the growth of e-commerce and for more benefits to be derived by market participants, the potential risks must also be taken into consideration. AI algorithms and the data fed into the algorithm may carry biases, either unintended (for instance, historical biases in data) or resulting from the programming of the algorithm, or even exploiting the

¹⁴⁸ Esposito, Hernández, van Bavel & Vila (2017). Nudging to prevent the purchase of incompatible digital products online: An experimental study. *PloS one*, 12(3). Available at: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0173333>.

¹⁴⁹ Lupianez-Villanueva *et al.* (2018), Behavioural Study on the Transparency of Online Platforms.

Available at: https://ec.europa.eu/info/sites/info/files/transparency_of_platforms-study-final-report_en.pdf.

¹⁵⁰ See for instance the Nutri-score system adopted by France, Belgium and other EU Member States. For further details, please see: <https://www.santepubliquefrance.fr/determinants-de-sante/nutrition-et-activite-physique/articles/nutri-score>. Last consulted on 19 March 2020.

¹⁵¹ For further details on the EU energy label and eco-design system, please see: https://ec.europa.eu/info/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/energy-label-and-ecodesign_en. Last consulted on 19 March 2020.

¹⁵² Please see Note 14.

¹⁵³ Earth Mall with Rakuten, accessible at: <https://event.rakuten.co.jp/earthmall/>.

See also: "Earth Mall with Rakuten", an online shopping mall to mainstream sustainable production and consumption practices (SDG 12). Available at: <https://sustainabledevelopment.un.org/partnership/?p=30633>. Last consulted on 19 March 2020.

¹⁵⁴ Song *et al.* (2019), The Application of Artificial Intelligence in Electronic Commerce, *IOP Conf. Series: Journal of Physics: Conference Series*, Vol 1302:3, <https://iopscience.iop.org/article/10.1088/1742-6596/1302/3/032030>.

biases of consumers, as noted in the “Ethics guidelines for trustworthy AI”¹⁵⁵. It is thus essential to support the development of new technologies for the benefit of the single market, while ensuring that biases, whether or not intended, are limited or removed and that transparency and oversight is ensured.

4.3.2. Tackling illicit trade

While illicit trade is facilitated in some respects by digital developments and the expansion of e-commerce (see Section 3.3), new digital technologies may also help mitigate the problem. Technologies from the all too common smartphone to blockchain can be harnessed to ensure that goods are tracked and give stakeholders along the value chain (and ultimately consumers) the certainty that their purchases are not fake and do not pose any safety issues. The question of how to tackle illicit trade can be approached also from a legal perspective, focusing on platform liability. Within the scope of this study, this section only focuses on technology-driven solutions, putting forward a perspective that brings together the entire value chain.

Leveraging smartphones and the potential of existing anti-counterfeit tools could help consumers to verify the goods they buy and protect themselves against fake products¹⁵⁶. The Interface Public-Members tool developed by the World Customs Organisation and used by customs officials to identify genuine/fake goods could serve as an example¹⁵⁷. A version of this tool could be developed for wider use among consumers, who would thus be able to contribute themselves to detecting counterfeits in an age in which such products can make their way with little risk of detection to consumers through small package deliveries. This way, one can achieve a broad base of verification of counterfeit products that have already made it into the market for consumption.

To trace and authenticate goods at all stages of the value chain, one also needs to ensure the interoperability of systems across regions, sectors and platforms. The role of policy-makers in this regard is to support and promote the coherent application of standards, guidelines, and business practices. Regulators could encourage actors across the value chain to adopt the right specification and technologies, set interoperability requirements to ensure protection against illicit trade, and monitor the impact of these actions.

Addressing illicit trade requires technologies for the security of information, traceability and authentication of products. In this context, blockchain technologies can play an important part, as the information stored on a blockchain cannot be changed or manipulated in any way; in addition, every new piece of information is linked to previous information stored in the chain, making it relatively easy to track the origin of goods¹⁵⁸. Solutions based on blockchain are already being implemented in different sectors. For instance, fashion brands can resort to blockchain technology to protect their products against counterfeit; pharmaceutical companies can use blockchain and time stamps to track the origin and date of production of medicine; blockchain can even be applied to tracing and authenticating wine¹⁵⁹. With applications across multiple sectors, blockchain can become a standard

¹⁵⁵ High-Level Expert Group on AI (2019), Ethics guidelines for trustworthy AI, European Commission, p. 18. Available at: <https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai>.

¹⁵⁶ Coalition Against Illicit Trade (2017), Implementing digital solutions to address the issue of cross border illicit trade, November 2017.

¹⁵⁷ World Customs Organisation (2015), WCO launches the new IPM platform, available at: <http://www.wcoomd.org/en/media/newsroom/2015/october/wco-launches-the-new-ipm-platform.aspx>. Last consulted on 19 March 2020.

¹⁵⁸ Ganne (2018), Can Blockchain revolutionize international trade?, World Trade Organisation, pp. 65-67. Available at: https://www.wto.org/english/res_e/booksp_e/blockchainrev18_e.pdf.

¹⁵⁹ See, for instance, Notes 156 and 158.

tool in the protection against illicit trade. AI also has the potential to curb the impacts of such illicit trade and e-commerce fraud: applications of AI like deep learning are showing promising results in detecting fraudulent sellers online who use fake advertising to illegally promote stores and products¹⁶⁰.

4.3.3. Energy and the environment

Corporate sourcing of renewable energy is one of the main solutions to reduce CO₂ emissions generated by large data centres and ICT infrastructure, whose electricity needs are poised to grow sharply in the coming years (see Section 3.4)¹⁶¹. An increasing number of digital platforms, such as eBay, Etsy, Facebook, Google and Rakuten have already committed to 100% renewables in the shortest possible timeline, and by 2050 at the latest¹⁶². Besides contributing to achieving the EU energy and climate targets¹⁶³ and fighting against climate change, renewables generate multiple benefits for corporate buyers¹⁶⁴, such as i) enhancing their corporate social responsibility, thus making their services more appealing for consumers¹⁶⁵; ii) creating more value for their shareholders, especially if one considers that investors' decisions progressively take into account environmental and social impacts¹⁶⁶; iii) enabling participation in green supply chains, as a growing number of business users are seeking 'green' services; and iv) reducing their energy costs, as generation costs for new solar and wind power projects are currently below the wholesale electricity price.

Corporate buyers usually have four options for obtaining electricity from renewable sources: i) self-generating, e.g. solar or wind power, for self-consumption purposes; ii) entering long-term power purchase agreements (PPAs); iii) purchasing unbundled guarantees of origin (GOs); and iv) subscribing to green energy offers. To reduce their procurement risk, digital platforms usually rely on a mix of options. For instance, they combine self-generation with PPAs while sourcing a portion of the electricity they need from either green suppliers or the wholesale market. Finally, they often rely on unbundled GOs to green the remaining portion of their electricity consumption. In this context, the new "Clean Energy for All Europeans" package¹⁶⁷ is a quantum leap to facilitate corporate sourcing of renewable energy. Policy uncertainty and regulatory constraints are nonetheless still considered the most relevant challenges faced by companies wishing to source renewable electricity in the EU.

Against this background, any remaining barrier to corporate sourcing of renewable energy should be carefully removed. First, it is key to ascertain whether Member States will properly implement the numerous enabling measures introduced by EU legislation, such as creating 'one-stop shops' to

¹⁶⁰ Guo et al. (2019), Securing the Deep Fraud Detector in Large-Scale E-Commerce Platform via Adversarial Machine Learning Approach. In The World Wide Web Conference (WWW '19), Association for Computing Machinery, pp. 616–626. Available at: <https://doi.org/10.1145/3308558.3313533>.

¹⁶¹ Georgiev (2019), Competitiveness of corporate sourcing of renewable energy, Annex A.3 to Part 2 of the Study on the competitiveness of the renewable energy sector, Case study: Google, European Commission.

¹⁶² For further details, please consult the RE100 initiative website at: <http://there100.org/re100>. Last consulted on 19 March 2020.

¹⁶³ For further details, please see: https://ec.europa.eu/info/energy-climate-change-environment/overall-targets_en. Last consulted on 19 March 2020.

¹⁶⁴ Simonelli (2019), Competitiveness of corporate sourcing of renewable energy, Part 2 of the Study on the competitiveness of the renewable energy sector, European Commission.

¹⁶⁵ Capgemini (2018), *Making business sense: How RE100 companies have an edge on their peers*, Energy transition and profitability, Insight Report, September 2018.

¹⁶⁶ For further details, please see: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en. Last consulted on 19 March 2020.

¹⁶⁷ For further details, please see: https://ec.europa.eu/energy/topics/energy-strategy/clean-energy-all-europeans_en. Last consulted on 19 March 2020. When it comes to corporate sourcing of renewables, the most relevant pieces of legislation include: Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast); Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU; and Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity.

authorise the installation of renewable energy plants, permitting 'private wires' for near-site self-generation of renewable energy, establishing energy taxation systems that do not discourage self-consumption and reduce the overall costs of electricity from renewable sources and ensuring that any support scheme is stable and market-based. In addition, any ambiguity stemming from the national interpretation of EU rules on the topic should be promptly clarified, as uncertainty increases business costs. Solutions similar to the EU Innovation Deals¹⁶⁸ could be considered to allow generators and buyers cooperating with national authorities and EU institutions in order to identify and address regulatory barriers linked to the national interpretation of EU legislation.

Second, new and more targeted measures could be introduced to allow digital platforms to meet a larger share of their electricity demand via PPAs. These agreements are a very promising option for digital platforms, as PPAs do not entail any upfront investment cost and ensure long-term stability for electricity prices. They are also beneficial to the EU as a whole, as they ensure new investment in renewable generation (the so-called additionality), especially in a context where public funding for renewable installations is phasing out. Renewable PPAs would certainly benefit from the stabilisation of the non-energy components of the electricity price that depend on the regulatory framework (e.g. network costs, levies for renewable energy sources, non-recoverable taxes); such stabilisation would be facilitated by both long-term guidance at the national level as well as multiannual Commission state aid guidelines enabling compensation for levies for renewable support schemes, for example. PPAs would also benefit from public guarantee schemes reducing risks stemming from long-term agreements¹⁶⁹ as well as from removing national regulatory barriers that still affect the transfer of GOs from generators to buyers and the ability of generators and buyers to contract directly.

4.3.4. Taxation fit for the digital era

Sustainability also means ensuring that tax rules stay up to date and all players of the digital economy pay a fair share of taxes. The digital services taxes already adopted by some EU Member States and planned by others signal that this issue is high up on policy agendas and is likely to change tax systems in the coming years. In this context, some guiding principles should be considered in the debate on digital taxation to ensure that new tax rules do not hinder cross-border e-commerce¹⁷⁰.

- *Ensuring legal and regulatory certainty.* Uncertainty can be disruptive for e-commerce activities and generate barriers to online sales. When it comes to taxation, the most prominent sources of uncertainty are the complexity of national tax codes and unpredictable treatment by tax authorities, as well as frequent changes to tax rules¹⁷¹. These issues may inflate the costs of doing business, affecting especially companies that operate cross-border, including digital platforms and online sellers that may need to comply with new tax rules in several countries and even face double taxation issues;
- *Avoiding unnecessary compliance costs.* The complexity of the digital economy can give rise to equally complex digital tax rules in terms of, e.g. definition of the tax base, the scope of

¹⁶⁸ For further details, please see: https://ec.europa.eu/info/research-and-innovation/law-and-regulations/innovation-friendly-legislation/identifying-barriers_en. Last consulted on 19 March 2020.

¹⁶⁹ See for instance the case of the Norwegian Export Credit Guarantee Agency, available at: <https://www.giek.no/press-and-news/news/did-you-know-that-the-norwegian-government-can-guarantee-for-long-term-power-purchase-agreements-in-norway-article1271-1026.html>. Last consulted on 19 March 2020.

¹⁷⁰ For an in-depth discussion on the digital services tax and principles to be followed when designing such measures, please see: Iacob & Simonelli (2019), Taxing the Digital Economy: Time for Pragmatism. Available online at: <https://www.ceps.eu/taxing-the-digital-economy/>.

¹⁷¹ Zingari, Caiumi & Hemmelgarn (2017), Tax uncertainty: Economic evidence and policy responses, Taxation papers, working paper n. 67, European Commission. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_paper_67.pdf.

application and tax filing requirements. Complexity tends to increase compliance costs. Online traders and digital platforms operating in multiple countries may need to adapt their accounting systems, customer management systems and user management systems, among others, to respond to the specific requests coming from national tax authorities, thus multiplying the costs to operate across borders;

- *Designing proportionate rules.* New tax rules should avoid discouraging small and innovative businesses. SMEs are particularly at risk when there are changes in tax rules, as they are usually more fragile from a financial standpoint and have less room to pass tax costs on. Importantly, even when the tax measures are designed to protect SMEs, the case of Amazon in France and in Italy (see Section 3.5) shows that additional risks can still materialise: platforms may pass the burden of additional taxes on to the smaller online retailers using their platforms for online sales. It is crucial that such transmission channels are accounted for.

Against this background, the more fragmented the EU taxation landscape is, the greater is the threat to the Digital Single Market. A plethora of digital tax measures being adopted by Member States may prevent digital companies as well as SMEs selling online from scaling up and going cross-border, especially considering that tax compliance costs are proportionately higher for SMEs than for large companies¹⁷². As the internet knows no border, the best taxation system fit for the digital era should be designed at the global level. Should the OECD (see Section 3.5) be unable to set up an international framework for digital taxation by the end of 2020, however, unilateral measures are likely to proliferate across the globe. In this case, the EU should intervene to ensure a coordinated approach across Member States, avoid fragmentation and secure the proper functioning of the Digital Single Market.

¹⁷² KPMG (2018), Study on compliance costs for SMEs, European Commission, available at: <https://op.europa.eu/en/publication-detail/-/publication/0ed32649-fe8e-11e8-a96d-01aa75ed71a1/language-en>.

5. CONCLUDING REMARKS

The e-Commerce Directive can be considered a very timely, well-designed and forward-looking piece of EU legislation that has survived for two decades while facilitating e-commerce and generating tangible benefits in terms of business opportunities, consumer welfare and market integration. To fully reap the benefits of e-commerce in the Digital Single Market, however, it is time to revamp the Directive, lift the remaining obstacles affecting cross-border purchases of goods and services (see Section 2) and curb the emerging costs linked to the ever-changing digital platform ecosystems (see Section 3).

In this context, the European Commission has recently announced the upcoming introduction of the digital services act (DSA), which is awaited as a panacea by multiple stakeholders. The exact contents of this piece of legislation are yet to be clearly fleshed out. Initial announcements surrounding the DSA suggest that the focus of the planned legislative proposal will be on liability and safety rules for digital platforms, thus narrowing the scope and ambitions of EU intervention¹⁷³. A recent Communication from the Commission further stressed that product compliance and safety issues will be analysed as part of the process of elaborating the DSA¹⁷⁴. The Data Strategy Communication provides an additional hint: in the preparation of the DSA, the Commission will also consider issues of bargaining power arising in the context of platforms and big data¹⁷⁵.

In spite of the convincing name, the DSA could look more like a digital platform regulation, mostly concentrating on illegal or harmful digital content and platform liability, than a Copernican revolution to the provision of digital services in the internal market. This solution may be in line with a multi-stage approach to boosting e-commerce in the EU:

- In stage one, emerging costs in the age of platforms – such as issues linked to market power vis-à-vis consumers, illicit trade and illegal content – could be addressed by the DSA. When examining platform-to-consumer relations the EU legislator should take into account not only transparency, liability and enforcement, but also new technologies, and how to harness them in order to foster sustainable consumption and production by cooperating with the internet's gatekeeper, the online platforms. In the same vein, digital technologies for the security of information, traceability and authentication of products may also provide an effective solution to illicit trade and harmful content issues, involving all the actors of the value chain, including consumers;
- In stage two, market power vis-à-vis SMEs and other e-sellers, as well as any remaining barriers to cross-border e-commerce (including issues affecting digital creative content) could be addressed via the proper implementation and revision, if needed, of the pieces of legislation enacted by the previous legislature. The European Parliament in its current composition will have the opportunity to review the Regulation on cross-border parcel delivery services, the Geo-blocking Regulation and the P2B Regulation. The reviews will allow for an assessment of the next steps necessary to resolve issues related to cross-border deliveries, improve cross-

¹⁷³ A Union that strives for more: My agenda for Europe. Political guidelines for the next European Commission 2019-2024. Available at: https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf.

¹⁷⁴ For further details see Action 3 in the following Communication: European Commission (2020), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Long term action plan for better implementation and enforcement of single market rules, COM(2020) 94 final. Available at: https://ec.europa.eu/info/sites/info/files/communication-enforcement-implementation-single-market-rules_en_0.pdf.

¹⁷⁵ European Commission (2020), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European strategy for data, COM(2020) 66 final, p. 14. Available at: https://ec.europa.eu/info/sites/info/files/communication-european-strategy-data-19feb2020_en.pdf.

border access to digital content and ensure a more incisive framework for securing fair and sustainable relations between digital platforms and their business users.

This second stage may be complemented by a revision of competition rules to adapt them to the digital era. The picture will be further completed by the OECD and/or the Directorate-General for Taxation and Customs Union proposing a solution for the issue of digital taxation and by the Directorate-General for Energy fostering renewable power purchase agreements, in cooperation with Member States.

There are three main risks, however, stemming from such a piecemeal approach. First, further delays in completing the Digital Single Market will be registered, as solutions will be implemented over years. Second, inconsistencies and loopholes may arise, as coordinating multiple pieces of legislation in several policy domains may be quite a complex exercise. Last, as already seen in the past, some interventions may end up being less ambitious than needed by leaving more ambitious solutions to future pieces of legislation.

Against this background, the awaited DSA may represent a once-in-a-lifetime opportunity (coordinated by the executive vice-president responsible for a “Europe fit for the digital age”) to codify all EU rules affecting e-commerce. The European e-commerce code would set up a comprehensive and forward-looking framework of solutions to maximise the potential gains of e-commerce for the single market, while minimising the costs that can come up across a variety of fields. The code could address all the barriers and costs covered under stages one and two above, revise competition rules and also cover digital taxation, while only leaving the energy and environmental issues out of its scope.

A European code in this field may be seen as over-ambitious and it would certainly be a difficult endeavour to implement it. Nevertheless, considering how closely intertwined e-commerce is with a variety of fields and the additional benefits that could be unlocked by ensuring a comprehensive framework for its sustainable development, such a solution is still worth exploring.

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This paper provides a framework for maximising current and potential benefits of e-commerce for the single market while minimising economic and societal costs. It takes stock of the role of the e-Commerce Directive and analyses new challenges arising in the age of platforms. Forward-looking solutions are presented to enhance cross-border e-commerce in the EU, facilitate access to digital copyrighted content and improve the sustainability of online platforms. Finally, the paper reflects on the planned digital services act, outlining policy recommendations.

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