@Ecommerce_EU

netcomm suisse ecommerce association

Survey of policy and legislative activities in the EU

Regulatory Framework for Operating e-Commerce in Switzerland, Bern 2018

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ECOMMERCE EUROPE

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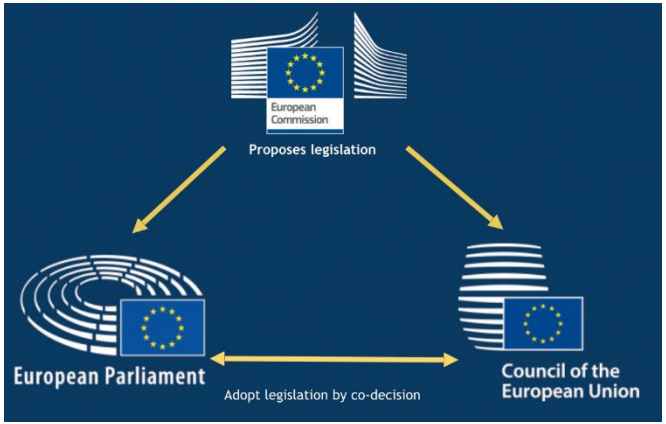
Ecommerce Europe

The VOICE of the e-commerce industry in the EU

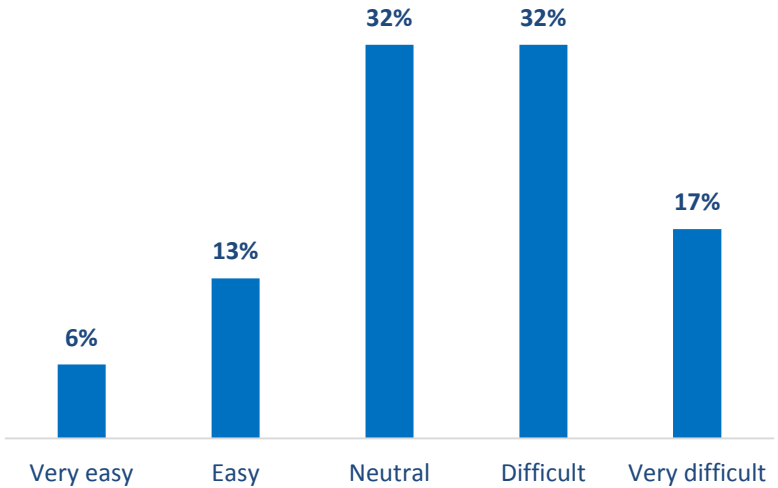
Representing **75.000+** companies selling online in Europe



Barriers to cross-border e-commerce in EU

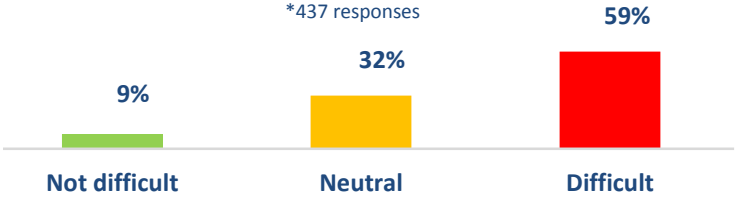
Ease of doing cross-border business in Europe

*510 responses



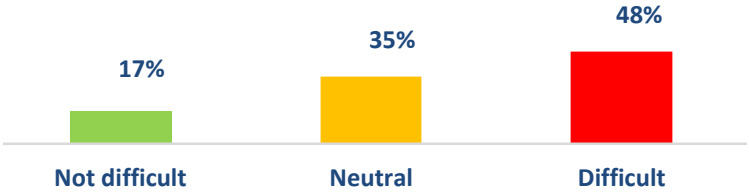
1 EU Legal framework

*437 responses



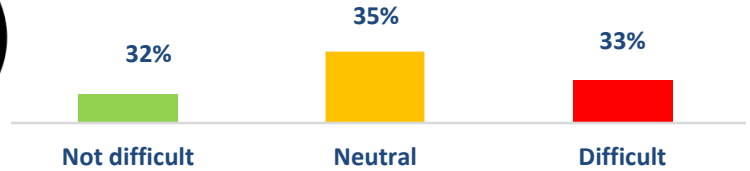
2 Taxation system, VAT and/or customs

*437 responses



3 Logistics and/or distribution

*437 responses



ECOMMERCE EUROPE

#DigitalSingleMarket

The European Commission's Digital Agenda

European Commission

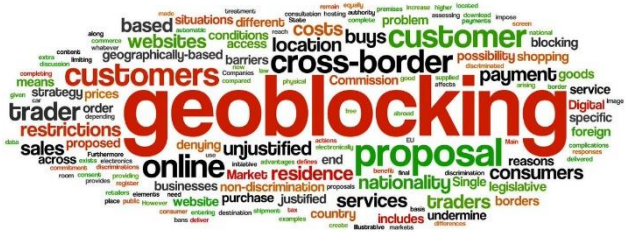
- Adopted on 6 May 2015
- Several legislative initiatives
- Some still under discussion
- **Focus on e-commerce**

Relevant EU legislation on e-commerce

Proposals for and (almost) adopted EU laws

1. Geo-blocking Regulation
2. Digital Contracts Proposals
   - Directive on contracts for the supply of digital content
   - Directive on contracts for the sales of goods
3. VAT Digital Single Market Package
4. General Data Protection Regulation
5. Proposal for a Regulation on ePrivacy

1. Geo-blocking Proposal



Will it help in selling more cross-border?

What is geo-blocking according the EU Commission?

Deny access to websites from other EU MS / prevent customers' access to products or services from abroad

What's the objective of the EU Commission's Proposal?

European Commission

- Give customers better access to goods/services in the EU single market
- How? By preventing discrimination based on customer's location
- E-merchants would not be allowed to discriminate between customers in 3 cases:
    1. When the trader sells online goods which are delivered in the country of the trader → "SHOP LIKE A LOCAL"
    2. When the trader provides e-services (i.e. cloud computing) not concerning copyright-protected works
    3. In the provision of services i.e. car rental → "SAME SERVICE, SAME LOCATION, SAME PRICE"

1. Geo-blocking Proposal

Will it help in selling more cross-border?

- Risk of creating legal uncertainty
- Better solution to increase cross-border e-commerce: tackle the causes of geo-blocking!
- Full harmonization of EU legal frameworks is a more appropriate approach
  - Easy rules = easy compliance = less costs = more legal certainty for businesses and consumers

What has Ecommerce Europe been doing?

- Managed to improve the informal interinstitutional agreement
  - More legal certainty for e-merchants
  - More safeguards for e-merchants (i.e. NO delivery obligation in all EU)
- EU Parliament & Council need to formally approve the Regulation (applicable by end 2018)

2. Digital Contracts Proposals

Will these directives help in selling more cross-border?

What are the issues?

For the (online) sales of goods: *too many differences between Member States in terms of contract law*

For the supply of digital content: *no EU-wide contract rules + single EU Member States initiatives*

In other words, 28 different sets of rules for B2C contract law

What's the objective of the EU Commission's Proposal?

- Provide the same set of rules in all 28 Member States with both proposals
- Achieve full harmonization = increase legal certainty for both businesses and consumers
  - Legal guarantee periods, remedies for faulty products, etc.
- Example: fully harmonized EU-wide legal guarantee period for defective goods set at 2 years

2. Digital Contracts Proposals

Will these directives help in reducing legal fragmentation in the EU?

- For both proposals, first good step for e-commerce, with a few concerns…
- Some provisions may be harmful:
  - Goods Proposal: face-to-face sales excluded from the scope → same product, different rules!
  - Digital Content Proposal: endless legal guarantee period

<u>What has Ecommerce Europe been doing?</u>

- Managed to improve both proposals:
  - Scope of the goods proposal: extended now to ALL B2C sales, major achievement!
  - Fixed legal guarantee period for defective digital content
- Still far from informal agreement between EU Institutions

3. VAT Digital Single Market Package

Will this reform help in selling more cross-border?

What are the issues?

Difficult VAT registration and declaration procedures

High VAT-related accounting and administrative costs

General unawareness of VAT rules

European Commission

What is the objective of the VAT DSM Reform?

Reduce administrative burden of businesses arising from different VAT regimes:

- Companies that sell goods online (both intra-EU and from third countries) will be able to take care of all their VAT obligations in the EU through a digital online portal, the “One Stop Shop” = single electronic registration and payment mechanism
- Introduction of a yearly VAT threshold of €10,000 under which cross-border sales to other countries within the EU are treated as domestic sales for online companies
- The removal of the current exemption from VAT for imports of small packages worth not more than €22 from outside the EU, which leads to unfair competition and distortion for EU companies

3. VAT Digital Single Market Package

Will this reform help in selling more cross-border?

EU VAT DSM Reform: game changer for e-commerce!

- Expected to reduce compliance & accountancy costs for e-merchants
- Expected to simplify procedures to sell cross-border in the EU

Online marketplaces will be made responsible for ensuring VAT is collected on sales on their platforms that are made by companies in non-EU countries to EU consumers

What has Ecommerce Europe been doing?

- Provided full support to European Commission and suggestions to further improve the reform
- Challenged the liability regime for marketplaces with a more proportionate solution

4. General Data Protection Regulation

Are businesses ready?

GDPR will be applicable in all EU countries as of 25 May 2018!

- Also applicable to businesses established outside the EU that offer goods/services or monitor the behavior of data subjects (i.e. consumers) within the EU
- Guidelines for implementation are not finalized yet!
- Businesses interviewed not fully aware about the new obligations!

What is Ecommerce Europe currently doing?

- Supporting EU Commission on the application of GDPR via new Expert Group:
  - Assist in identifying potential challenges
  - Provide advice to achieve an appropriate level of awareness
  - Develop an online toolkit for businesses (and individuals)
- Contributing to the Guidelines on GDPR developed by the Article 29 Working Party on Data Protection
- Providing general assistance to national associations on GDPR

5. Proposal for a Regulation on ePrivacy

Will this Regulation help in selling more cross-border?

What are the issues?

Current ePrivacy Directive not future-proof

Suboptimal level of harmonization

Fear of breaking privacy rules when selling cross-border

Suboptimal rules on cookies

What's the objective of the EU Commission's Proposal?

- Replace the ePrivacy Directive with a Regulation
- Full harmonization approach, as for the GDPR, to increase legal certainty
- Adapt privacy rules to new IT-based services (i.e. WhatsApp, etc.)
- Align the ePrivacy framework to the adopted GDPR

5. Proposal for a Regulation on ePrivacy

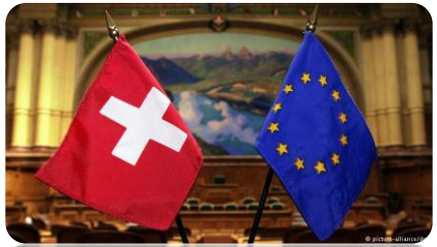
Will this Regulation help in selling more cross-border?

- Choice of a Regulation is positive → avoid "gold-plating" from Member States
- Cookies rules need revision: approach of Commission not optimal
- Conflicts and overlaps with the adopted GDPR:
  - GDPR → rules on the processing of personal data
  - ePrivacy → rules on the right of confidentiality of electronic communications
- Unrealistic deadline for agreement: 25 May 2018. Current estimation: 2019

<u>What has Ecommerce Europe been doing?</u>

- Position Papers, high-level meetings, joint statements, industry coalitions, amendments
- Council will take more time to assess the Proposal → still many lobbying opportunities

Any benefits for Switzerland from the DSM?

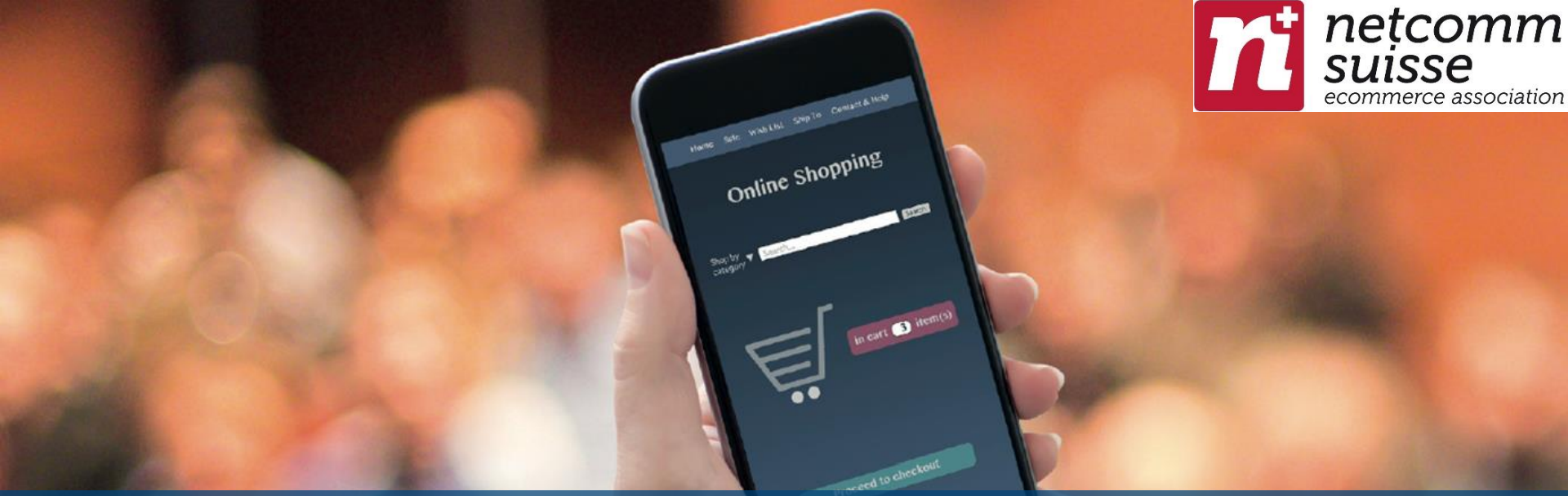


Are there any advantages for Swiss e-merchants?

SWISS ECONOMIC & TRADE RELATIONS WITH THE EU ARE MAINLY GOVERNED VIA BILATERAL AGREEMENTS

- Burdensome and costly taking over aspects of EU law to get access to parts of the EU Single Market
- More difficult to influence EU legislation when outside of the EU

- Dealing with a fully harmonized set of rules
  - Same EU-wide legal guarantee period for the sales of goods (if adopted)
  - Same rules for the protection of personal data (GDPR)
- Increasing legal certainty for Swiss online merchants selling to EU Member States
- Reducing costs for Swiss companies when selling cross-border to the EU



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Thank you! Questions?

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