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**commerce
meets
justice**

**E-justice
as an enabler
for cross-border
e-commerce in
Europe.**

E-justice: Unlocking the full potential of European e-commerce



FRANK WOULD

e-CODEX Community and External Relations Manager, Ministry of Justice and Security, The Netherlands

The full potential of the European e-commerce market has not yet been reached. While consumers feel safer buying from online stores within the borders of their own country rather than from other European countries, European traders experience a range of challenges of their own, such as the lack of a level playing field and the overwhelming complexity of the legal and judicial system. Justice is the sine qua non for trade, and e-commerce will only be able to reach its full potential in Europe when justice permeates the digital realm.

e-CODEX, the digital platform for cross-border legal data exchange within the European Union (EU), plays an important role in this regard. The mission of e-CODEX is to make cross-border Justice accessible for all citizens and businesses within the EU. To further this pursuit, e-CODEX hosted an **online roundtable discussion** about e-justice as an enabler for cross-border e-commerce in Europe, on November 25, 2020. This white paper is a representation of the facts and opinions expressed by the panel members.



Webcast of roundtable discussion can be viewed here: https://channel.royalcast.com/ministerievanjenv/#!/ministerievanjenv/20201125_1

PANEL MEMBERS:

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HANS VAN GRIEKEN

Senior Technology Researcher at Capgemini, Gartner and Deloitte

E-commerce in Europe and the impact of the pandemic

E-commerce is growing rapidly in Europe

While Ecommerce Europe forecasted that B2C e-commerce in continental Europe would grow 12.7 percent to a total of 720 billion euro in 2020, the pandemic has accelerated the expansion of the European e-commerce market even further. Due to this exponential growth, the European e-commerce industry is a market with great differences in terms of maturity, business models and the behaviour of consumers and traders across its member states.

First off, the differences between geographic regions are considerable. Despite the efforts of the European Commission to establish a harmonised Digital Single Market in Europe, the Western European e-commerce market is far more mature than its Eastern European counterpart. However, the Eastern European market is catching up rapidly, with a predicted growth rate of 27 per cent in 2020.

New business models are emerging

The online market features a wide variety of business models. While large enterprises are able to invest in in-house e-commerce solutions, SMEs mostly bring their business online through platforms and online marketplaces, ranging from local players such as Allegro in Poland or bol.com in The Netherlands, to large international cross-border platforms like Amazon, eBay and Rakuten. It is indisputable that platforms have played a substantial role in the growth of e-commerce, and they have done so by enabling SMEs to diversify sales channels, enter new markets, become more resilient and deal with fragmented legislation across Europe by complying with a single set of platform rules.



SMEs rely heavily on platforms for cross-border e-commerce.

For SMEs to enter cross-border markets in Europe without the use of platforms, further alignment of regulations is required.

LUCA CASSETTI – Secretary General of Ecommerce Europe

The European Commission is aware that platforms will continue to shape the future of e-commerce in a crucial way and has drafted the new Digital Services Act (2020) to support and modernise the existing EU regulations for digital services of the e-Commerce Directive (2000). In particular, the new directive deals with the rise of online platforms and their gatekeeper role in Europe's Digital Single Market and strongly focuses on the protection of consumer rights, a level playing field for businesses and room for innovation.

The COVID-19 crisis has created opportunity and urgency

During the pandemic, e-commerce has proven to be crucial for the continuation of economic activities across Europe. By extension, e-commerce allowed for society to continue to function. As a result, the processes that were already taking place in the industry have accelerated faster and further.

The digital world fills the gaps that were created in the physical world.

MARGARITA TUCH – Information Officer at DG JUST

As the coronavirus spread, many countries entered lockdown and offline retail activities were curtailed, forcing brick-and-mortar-only retailers to move online or perish. From a consumer point of view, shopping online suddenly became safer than its real-world equivalent. Considering that the post-pandemic behaviour of shoppers and sellers is unlikely to revert to pre-pandemic patterns, skyrocketing online sales should not be understood as a temporary peak.

Other notable effects of the pandemic include the acceleration of the shift towards omnichannel retail, the increased influx of products from outside the EU and the fact that platforms are embracing their role in cross-border protection of consumers.



CROSS-BORDER E-COMMERCE IN EUROPE

INTERNET USERS BY REGION 2019

95%

Northern Europe

Denmark
Estonia
Finland
Iceland
Latvia
Lithuania
Norway
Sweden

93%

Western Europe

Netherlands
Belgium
United Kingdom
Ireland
France
Luxemburg
Germany

85%

Central Europe

Austria
Czech Republic
Hungary
Poland
Slovenia
Slovakia
Switzerland

82%

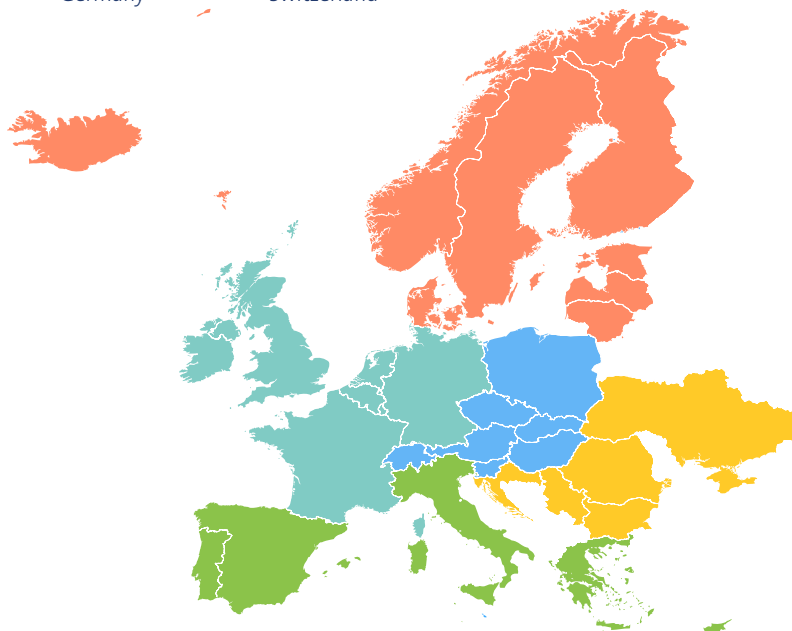
Southern Europe

Cyprus
Greece
Italy
Malta
Portugal
Spain

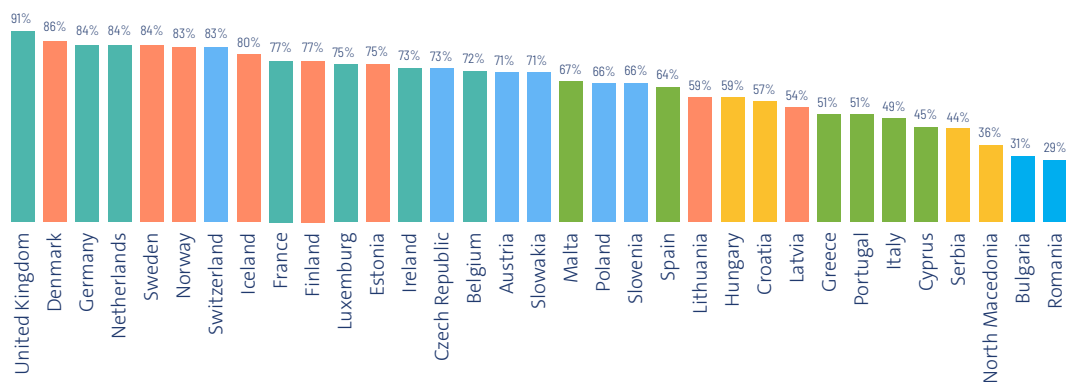
76%

Eastern Europe

Bulgaria
Croatia
Ukraine
Romania
North Macedonia
Serbia



E-SHOPPERS PER COUNTRY 2019



SOURCE: Europe 2020 Ecommerce Region report - Ecommerce Europe/ Eurocommerce

Legal aspects of inter-European e-commerce

LEGAL BARRIERS ARE HAMPERING THE GROWTH OF CROSS-BORDER E-COMMERCE

Looking at the current state of the European e-commerce market from a legal point of view, there are a number of concerns and challenges. European businesses wanting to grow beyond their national borders commonly run into issues such as laws that are out of touch with technology and the industry, unfair competition from merchants based outside the EU and legal fragmentation across the EU.

THE INDUSTRY NEEDS OMNICHANNEL LEGISLATION

Consumers and businesses are both increasingly blurring the distinction between offline and online trade and moving towards a seamless experience across all channels. For example, a consumer may see an advertisement for a product on a billboard, order it online and return it to a physical store later. From a regulatory perspective, however, online and offline trade are often treated differently. The regulatory environment needs to catch up with the omnichannel transition of the industry by aligning rules for all forms of B2C trade and providing seamless consumer protection across all channels.

THE FLOW OF NON-COMPLIANT PRODUCTS FROM OUTSIDE THE EU NEEDS TO BE CURBED

Consumers are buying products from global sellers via platforms and directly from webshops based outside the EU. Unfortunately, players based outside Europe are less likely to comply with European standards and legislation. Consumers might end up with illegal, unsafe or counterfeit products and European merchants may view this competition as being unfair. Clearly, this is a concern for both consumers and EU-based merchants. To level the playing field, the EU needs to curb the rise of non-compliant products by enforcing current regulations vis-à-vis non-EU companies operating in the EU.



WE WILL NOT ACCEPT

that traders play on consumers' fears caused by the COVID-19 outbreak in the EU. Some platforms, such as Amazon and Facebook, have voluntarily taken action against such publicity. Consumers' organisations are stepping up their work. This is the way to go. I urge all actors, including online marketplaces and media hosting platforms to carry on helping us fight against such predatory behaviour.

I can assure that the Commission and the competent authorities of the Member States will use all their powers to crack down on rogue traders.

DIDIER REYNERS – Commissioner for Justice and Consumers

LEGAL FRAMEWORKS NEED TO BE HARMONISED FURTHER

Businesses that want to offer their products online throughout the EU have to deal with 27 different sets of regulations related to consumer law as well as differences in language, culture, distribution and payment systems. While this may be possible for large conglomerates, it is not within reach for most SMEs as substantial resources are typically required to deal with this level of legal complexity. Small businesses, therefore, benefit less from the Single Digital Market than big enterprises. A truly harmonised and competitive Digital Single Market requires harmonisation of essential laws and standards so that European businesses can rely on a single set of rules when operating cross-border.

PREVENTION AND ALTERNATIVE DISPUTE RESOLUTION ARE KEY

It is in the interest of both consumers and businesses to avoid and resolve disputes as quickly as possible. The digital ecosystem makes it very easy for dissatisfied customers to leave a negative rating or review. Because reputation and trust are key for online sellers, negative ratings and reviews can be catastrophic for future sales, hence the need for swift and effective dispute resolution from the point of view of serious sellers. This is why large enterprises usually have significant customer service teams. The platforms also play an important role in smooth dispute resolution, encouraging buyers and sellers to solve issues amicably.

OUT-OF-COURT SETTLEMENTS IN LEGAL DISPUTES

Alternative dispute resolution (ADR) allows consumers and traders to settle disputes quickly, inexpensively and amicably without going to court. There are many out-of-court bodies across the EU, which means it is not always easy for users to find their way to the right ADR.

The European Online Dispute Resolution (ODR) platform provides access to ADR by allowing parties to submit disputes related to online purchases online to an ADR body in any language and in any EU country.

The European Commission envisions the ODR platform as the primary information hub or one-stop-shop for information and guidance on this issue, helping traders and consumers understand these regulations and thereby building trust in the industry.

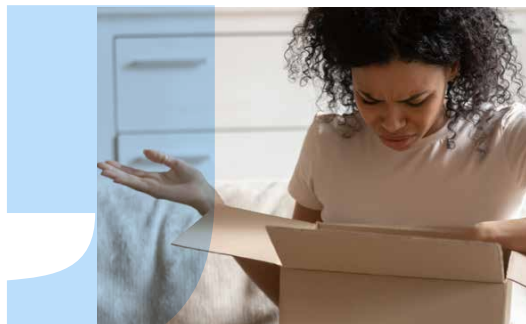


ODR Platform
<https://ec.europa.eu/consumers/odr/>

MEDIATION SYSTEM

The international backdrop adds a whole new level of complexity when it comes to unresolved B2C disputes. When faced with a cross-border dispute with a seller, buyers can request the help of a mediation system or use the European ODR-platform to find the right ADR body.

In reality, not all disputes can be solved amicably. In most cases, though, court proceedings really are a last resort when all other options have failed, e.g. in case of malpractice and rogue traders. Because rogue traders harm the trust of the consumer, e-commerce platforms are also taking active measures to prevent misuse. An unfortunate result is that rules and regulations are becoming more stringent for all players.



E-justice as an enabler for cross-border e-commerce

Cross-border commerce requires a functioning justice system

As a direct effect of the COVID-19 pandemic, the cross-border movement of goods has increased dramatically. In line with the increased movement of goods, the need for a functioning justice system across the EU has become more pressing. This is especially poignant when it comes to the trade of essential goods such as food and medical supplies. There is nothing like the knowledge that one's actions are protected by enforced laws to give buyers and sellers the confidence to do business overseas. As such, justice can be an enabler in cross-border e-commerce.

EU institutions are taking a wide range of measures to simplify, speed up and reduce costs of litigation in cross-border cases and improve accessibility. They have deployed several legal instruments, harmonised certain procedures (including the European Order for Payment, the European Small Claims Procedure and the European Account Preservation Order) and invested in the development of technology to facilitate the interoperability of legal systems. Although these efforts do help to simplify matters, much of the complexity of common cross-border procedures is still evident.

As a result, the actual number of cases covered by these procedures is still quite low. It is worrisome that legal protection is not equally accessible to all. Further digitalisation and automation of the legal domain around cross-border e-commerce is a necessary requirement to make justice equally accessible to all.

User-centricity is key

One thing all popular e-commerce platforms have in common, is their customer-centric strategy. Their secret to success is to always put the consumer first and focus on the user journey and experience. The legal world has yet to adopt this way of thinking.

While regulations are not yet developed with the end-user in mind, third parties are already successfully implementing services to bridge that gap and make justice accessible to all. Well-known examples include the resolution centres of commercial e-commerce platforms although it has to be noted that these platforms were often developed outside the EU and therefore are not native to the European justice system. Another example is the aforementioned ODR platform, which makes the existing ADR-infrastructure more accessible for the end-user.



Our efforts need to go into accessing all the information that is already there.

MARCO VELICOGNA – Researcher at Institute of Legal Informatics and Judicial Systems of the National Research Council of Italy



I would like to stress the importance of the usability of the tools.

MARGARITA TUCH – Information Officer at DG JUST

Existing information and services need to be disclosed better

It cannot be denied that European e-justice is lagging, but it is catching up. The EU is investing in the development of technological architecture that is suitable for both the emerging and advanced parts of the European e-commerce market. Ideally, the EU will provide users with a single point of access to all official legal and judicial systems within the EU. A 112 for legal help, so to speak, will absorb the complexity of judicial procedures in cross-border settings while guaranteeing a seamless user experience. Considering the current and prospective scale of this ambition, there is no doubt that this single point of access should be digital and automated. This calls for further digitisation of legal information and judicial services at a more granular level.

This highlights another important aspect of this issue: the need to educate the consumer. Most consumers do not look up in which jurisdiction the webshop they frequent is based. By and large, they are oblivious of which legal framework governs their purchases and what the implications of that might be. Educating the consumer may play an important role in the prevention of complex conflicts.



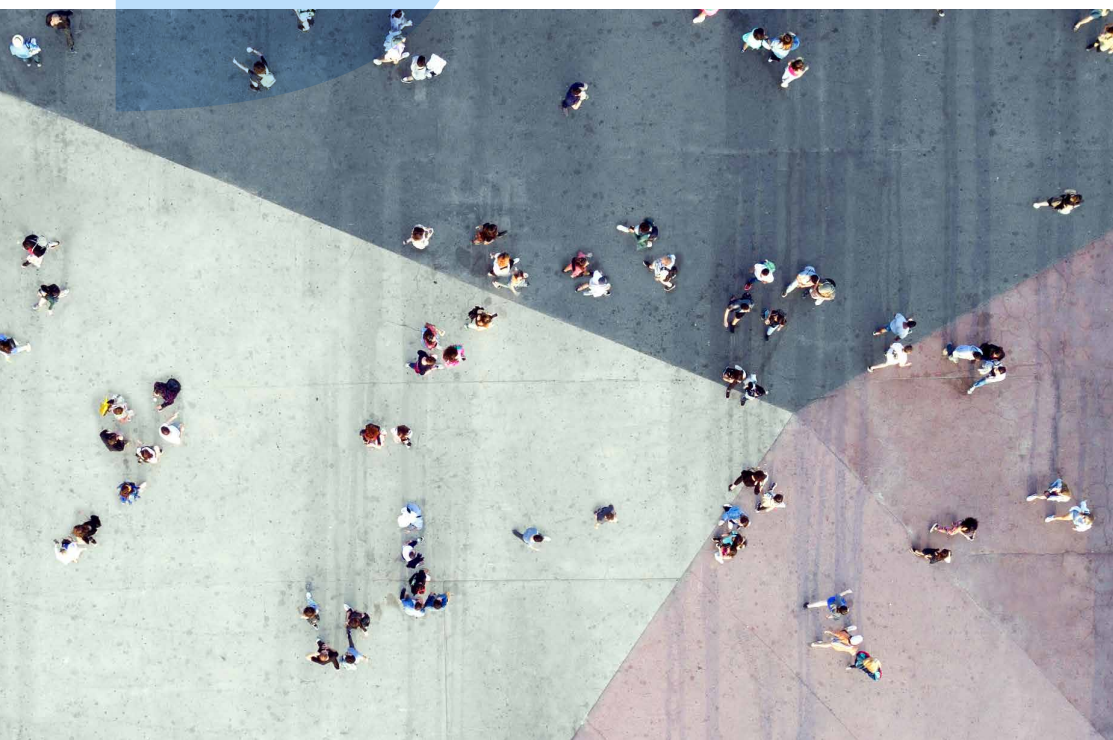
It makes a difference where you buy things, and consumers should be made aware of that. We should be investing in communicating to consumers what this is all about.

HANS VAN GRIEKEN – Senior Technology Researcher at Capgemini, Gartner and Deloitte

E-JUSTICE

can be an enabler for cross-border e-commerce in Europe as far as it helps to build consumer trust in buying from another European country.

LUCA CASSETTI – Secretary General of Ecommerce Europe



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