European Union:
E-Commerce with the EU

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MR - 117

Summary

E-commerce is a dynamic area of the EU's economy with **sales worth $415 billion in 2013, a 17% increase since 2012.** This report is intended as a general guide for exporters about the EU e-commerce market and various pieces of EU legislation that are applicable to e-commerce. For each section, links are provided to internet addresses that provide more complete information.

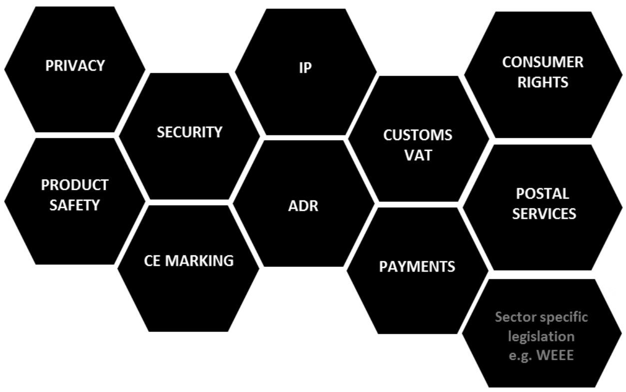
Overview of e-commerce market in the EU

The biggest markets in turnover are considered to be the UK ($132 million), Germany ($69 million), France ($62 million) and Spain ($16 million)[1]. In 2012, 41% of European consumers purchased online from national sellers and only 11% shopped from foreign internet retailers so there is a real growth potential[2].

The markets with the greatest growth in 2012 were Turkey (75%), Greece (61%), Hungary (35%), and Romania (33%)[3].

In 2012 the most popular purchases included clothes & sports goods; travel and holiday accommodation as well as books/magazines/e-learning material. There was a disparity between member states in the type of purchases. The United Kingdom (51%) and Germany (49%) had the highest number of purchasers of clothes & sports goods. Sweden (60%) followed by Denmark (56%) had the highest proportion of purchases for travel and holiday accommodation. Books, magazines and e-learning material were most common in Luxembourg (47%) and Germany (41%). Most Member States had less than 10% of purchases of food and grocery with the exception of the United Kingdom with 21%.

Further information can be found on tables at end of report[4] and these industry websites:
E-Commerce Europe: http://www.ecommerce-europe.eu/facts-figures
EMOTA: http://www.emota.eu/#!statistics/ccor



E-commerce operations in Europe are regulated primarily by the E-commerce Directive adopted in 2000. However the sector is governed by a series of other legislative instruments, either related to

[1] Source: Ecommerce Europe
[2] Source: European Commission
[3] Source: Ecommerce Europe
[4] Source: Eurostat

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MR - 117

the digital dimension of e-commerce (i.e. data privacy, online marketing, cyber-security), to the practical aspects of e-commerce (customs, VAT, shipping, product marking, dispute resolution) or to sector-specific legislation (e.g. environmental products, cosmetics, nutritional supplements). This report only addresses the first two categories.

E-Commerce Directive

The main piece of EU legislation regulating e-commerce is the E-Commerce Directive.[5] It establishes a legal framework by applying the principles of free movement of goods and services and freedom of establishment within the single market. The Directive covers B2C and B2B transactions as well as services provided free of charge to the recipient, e.g. funded by advertising or sponsorship. It does not apply to traditional radio broadcasting, television broadcasting, most legal services, or to gambling services.

While the Directive does not apply to transactions carried out in the U.S. or other jurisdictions, certain provisions apply to U.S.-based companies whose clients are located in Europe at the time of purchase.

The key elements of the Directive are the following:

- The e-commerce retailer has access to all 28 Member States. EU countries cannot make the pursuit of e-commerce within their borders subject to prior authorization.
- E-commerce retailers must make basic information available to the public and authorities (including notably name, geographic address and contact details).
- Online service providers must ensure transparency and provide information about commercial communications, electronic contracts and limitations of liability for intermediaries.
- The primary suppliers are liable for online content and not the intermediary providers e.g. network operators (acting as mere conduits, caches, or hosts of information).
- Contracts can be concluded electronically; therefore an e-contract carries the same legal status as an off-line contract.
- Information society services are, in principle, subject to the law of the Member State in which the service provider is established.

Further information can be found on the website of the European Commission:
http://ec.europa.eu/internal_market/e-commerce/index_en.htm

[5] Directive 2000/31/EC on certain legal aspects of Information Society Services, in particular electronic commerce, in the Internal Market

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MR - 117

Consumer Rights

The Directive on Consumer Rights (2011/83/EC) replaces various consumer-related directives and came into effect June 13, 2014 in the Member States. It creates more consumer protection and applies to online sales.

Some key requirements e-retailers must observe:

- Do not use pre-ticked boxes on the retailer's website; this is meant to eliminate hidden charges and costs and increase transparency.
- Consumers will have 14 days to withdraw from a contract and return goods if they change their mind. Refunds must be made within 14 days of the withdrawal
- Eliminate surcharges for the use of credit cards and hotlines.
- Provide clear information on who pays for returning goods. Delivery costs refunds are borne by the seller unless clearly specified otherwise.

The Directive on Consumer Sales and Guarantees further obliges the seller to provide a 2 year minimum warranty. If the goods are not delivered in conformity with the sales contract, consumers can ask for the goods to be repaired, replaced, and reduced in price or for the contract to be rescinded. Member States can provide longer warranty periods if they choose.

In addition, U.S. companies must refer to the so-called Rome I Regulation[6][7] to determine which contractual law applies to a transaction. According to this Regulation, consumer contracts "shall be governed by the law of the country where the consumer has his habitual place of residence, provided that the professional [vendor]: (a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or (b) by any means, directs such activities to that country or to several countries including that country, and the contract falls within the scope of such activities." Therefore, consumers that reside in the EU and purchase from a US-based company may refer to the legislation of their country of residence.

Further information on the European Commission's webpage: http://ec.europa.eu/justice/consumer-marketing/rights-contracts/directive/index_en.htm

http://ec.europa.eu/justice/consumer-marketing/rights-contracts/sales-guarantee/index_en.htm
Rome I Regulation: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1403248135360&uri=CELEX:02008R0593-20080724

[6] Rome I Regulation: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1403248135360&uri=CELEX:02008R0593-20080724
[7] The Rome I regulation does not apply to Denmark.

Susana Getman
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September 2014
MR - 117

Intellectual Property Rights

It is important to understand that Intellectual Property is territorial, and U.S. trademarks and/or patents are only valid in the U.S. Companies should protect their rights before beginning to sell in the EU. Counterfeiting and Piracy are a concern for online sales and companies should develop a strategy for protecting their IP before a problem develops. There are several pieces of EU legislation designed to protect the various intellectual property including trademark (brand), patent (inventions), copyright (brochure, website content, etc.), trade secrets (proprietary information).

Further information can be found on the European Commission's website:
http://ec.europa.eu/internal_market/intellectual-property/index_en.htm

For more information on protecting and enforcing your intellectual property rights in foreign markets go to www.stopfakes.gov for SME training module and IP Toolkits.

The EU's Copyright Directive[8] was adopted in 2001 as a means of complying with the EU's obligations under two international treaties adopted within the framework of the World Intellectual Property Organization (WIPO). It provides for a "reproduction right" (Article 2), a "right of communication to the public and right of making available to the public other subject-matter" (Article 3, covering publication and transmission on the Internet), and the "distribution right" (Article 4). It is worth noting that the rights protected by Article 3 are not subject to the first-sale doctrine.

U.S. companies should also research the Copyright Directive's transposition into member states' national legislation. Finally, it is worth noting that the European Commission is currently discussing how the copyright regime could be updated to make it fit for the digital environment.

Further information can be found on the web sites of the European Commission:
http://ec.europa.eu/internal_market/copyright/index_en.htm

Regarding illegal content online, Article 14 of the E-Commerce Directive contains the basis for procedures for notifying and acting on online illegal content. It provides that hosting providers, in order to benefit from a liability exemption, should act expeditiously to remove (take down) or to disable access to (block) illegal activity or information of which they have obtained actual knowledge. The Directive on the enforcement of intellectual property rights (Enforcement Directive) also establishes provisions that Member States shall ensure that right holders are in a position to apply for an injunction against intermediaries whose services are being used by a third party to infringe intellectual property rights.

Further information: http://ec.europa.eu/internal_market/e-commerce/notice-and-action/index_en.htm

[8] Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society

Susana Getman
Isabelle Roccia
September 2014
MR - 117

VAT rules for Electronically Supplied Services (ESS)

The Value-Added Tax (VAT) is a tax on consumer spending that is collected by VAT registered traders on sales of goods and services. VAT is a tax on the “value added” imposed at each stage of the production and sales process of a good or service, with the final consumer - an individual or a business - being the only one who is actually taxed. Each Member State imposes different VAT rates The two key pieces of legislation are: the VAT Directive 2006/112/EC and its Implementing Regulation 282/2011.

From 1 January 2015, new rules will apply to electronically supplied services (ESS) as well as telecommunications and broadcasting services. Those services will be taxed in the country where the customer is established, e.g. where he permanently resides.

- ⇨ B2B: U.S. firms supplying ESS to businesses in the EU do not need to charge VAT: it will be up to the European client to account for the VAT.

- ⇨ B2C: When supplying ESS to a private consumer in the EU, a U.S. company must charge VAT based on the rate of the EU Member State where the consumer resides. This means that the U.S. company must be registered for VAT in an EU Member State. A single one-stop-shop (“MOSS”) procedure allows to register and do payments in one EU Member State to only one tax administration. This registration is valid throughout the EU. For those transactions, U.S. companies have to collect the VAT amount from private consumers, report them and complete the payments to the authorities.

In June 2014, the EC published the Report of the High level Group on Taxation of the Digital Economy, which does not recommend the creation of a separate tax regime, but underlines that current taxation rules may need to be adapted to respond to the digitization of the economy. The destination-based VAT system for digital services is commended. The Commission will now consider the report and decide on policy orientations in due course.

Please see our comprehensive Report on VAT (http://buyusainfo.net/docs/x_7079960.pdf);
A separate Report on VAT for Electronically Supplied Services will be finalized in 2014.
For more information on the EUs VAT policy on ESS as it will apply as of 2015:
http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm
http://ec.europa.eu/taxation_customs/taxation/vat/traders/e-commerce/index_en.htm

Payments

There are still vast differences among national payment systems in the European single market. The EU created a Single European Payments Area (SEPA)[9] to remove these obstacles and reduce the costs

[9] See Directive on Payment Services (PSD), implemented in 2009

Susana Getman
Isabelle Roccia
September 2014
MR - 117

of cross-border payments for consumers. SEPA applies a common set of rules to all payment services in the European Union and EFTA[10] countries. The main benefits of SEPA are the following:

- Although most countries involved are not in the Eurozone, all payments are processed in euros).
- SMEs are able to receive and make payment in euros anywhere inside SEPA.
- Merchants are able to accept payment cards from all SEPA countries.

Further information can be found on the European Union's websites:
http://www.ecb.int/paym/sepa/html/index.en.html
http://ec.europa.eu/internal_market/payments/sepa/index_en.htm

Data Protection

The primary piece of legislation is the "Data Protection Directive".[11] The main requirements for the controller/processor of personal data are (non-exhaustive list):

- to inform the data subject about the collection of personal data and the purpose of the processing,
- to grant the data subject access to that data and the possibility to rectify/erase it.
- to guarantee the security of the data (against disclosure, loss, alteration, etc.).

This Directive applies to all personal data processed within the EU but also to personal data transferred from the EU to a third country - for example employee data held in the EU that might be sent to the U.S. for payroll processing. The Directive specifies that such data can only be exported if "adequate protection" is provided. It thus foresees several mechanisms U.S. companies can use to transfer personal data from the EU to the U.S.:

- Certify to the Safe Harbor program[12]. The program allows U.S. companies to sign up voluntarily to a set of principles that address the way the company will deal with personal data from the EU to mirror's the Directive's requirements. The commitment is enforceable by the FTC under U.S. law.
- Include data privacy clauses in the contracts they sign with their European partners (contractual clauses or binding corporate rules);
- Refer to one of the Directive's exceptions: data transfer necessary for the conclusion or execution of a contract or unambiguous consent of the data subject.

A Market Report with detailed information on these mechanisms is available upon request.

[10] European Free Trade Association members are Norway, Iceland, Switzerland and Liechtenstein
[11] Directive 1995/46/EC on the protection of individuals with regard to processing of personal data and on the free movement of such data.
[12] http://www.export.gov/safeharbor/

Susana Getman
Isabelle Roccia
September 2014
MR - 117

In 2012, the Commission proposed a major reform of the Data Protection Directive in order to strengthen online privacy rights and harmonize practices across the EU. With no determined end date for the reform proceedings, the Data Protection Directive is still the current legislation into force. In addition each member state has national legislation implementing the Directive.

More information on the Data Protection Directive and the current reform process is available at: http://ec.europa.eu/justice/data-protection/

E-Invoicing in Public Procurement

In March 2014, the EU adopted a Directive on e-Invoicing in Public Procurement[13] which establishes a European e-invoicing standard expected to improve interoperability between different the existing systems. It aims at eliminating legal uncertainty, excessive complexity, and additional operating costs for businesses that currently have to accommodate several e-invoicing schemes across the EU. Provided that the e-invoices sent by a company are compliant with the forthcoming European standard on e-invoicing in public procurement, they will ultimately be accepted by all public authorities throughout Europe. This Directive will enter fully into force in the Member States in the third quarter of 2018.

Once published, the EU Directive will be accessible on DG Internal Market website: http://ec.europa.eu/internal_market/publicprocurement/e-procurement/index_en.htm

E-identity and trust services

In July 2014 the EU adopted a new regulation on e-identity and trust services, applicable to electronic transactions, whether for public contracts or business transactions. The regulation enters into force on September 17, 2014 but the transition period foresees its application as off July 1st, 2016 for trust services and July 2018 for e-identity services. The purpose of the regulation is primarily to enhance trust in e-transactions and cross-border recognition in the internal market. Trust services covered by the text are: electronic seals, time stamping, electronic document acceptability, electronic delivery and website authentication.

The main provisions and requirements introduced by the regulation are:

- Mutual recognition of e-Id systems issued across the EU.
- Notification and information: e-Id systems notified must be accompanied by information on the scheme, applicable supervisory regime and liability regime, etc.
- Security breach notification: the notifying Member State should suspend or revoke without delay compromised cross border authentication or parts of it.

[13] As of May 2014, the EU Directive has not been published yet by the EU Official Journal. This should occur later in 2014. For the press release: http://europa.eu/rapid/press-release_MEMO-14-179_en.htm

Susana Getman
Isabelle Roccia
September 2014
MR - 117

- Liability: notifying Member State, e-ID providers and authentication procedure operator are liable for damage caused intentionally or negligently.

More information: http://ec.europa.eu/digital-agenda/en/trust-services-and-eid
The full text of the regulation can be found here:
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_257_R_0002&from=EN

CE Marking

CE Marking is an EU legal requirement meant to ensure that a specific product is in conformity with EU legislation. It is the manufacturer's statement of compliance with "essential requirements" related to safety, health, environmental protection or energy efficiency. Depending on the intended purpose and characteristics of a particular product, it may fall under the scope of a CE marking law. That is the case for 80% of goods placed on the EU market, whether the manufacturer is based in Europe or elsewhere.
Meeting EU standards is voluntary but doing so assures compliance with EU legislation. In most cases, manufacturers can declare compliance themselves, without mandatory involvement of a test laboratory or government authority.

More information can be found on our website:
http://export.gov/europeanunion/eustandardsandcertification/index.asp
For the EU Guide to CE Marking:
http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/downloads/ce_leaflet_economic_operators_en.pdf

Alternative Dispute Resolution/Online Dispute Resolution

In June 2013 the EU published new legislative package on ADR/ODR which Member States need to implement by July 2015. The ADR Directive ensures quality alternative dispute resolution for all kinds of contractual disputes that consumers have with traders, including for online purchase originated in third countries. The ODR creates an EU-wide online platform for disputes arising from online transactions specifically. The platform will link all the national alternative dispute resolution entities and will operate in all official EU languages. E-Retailers should inform consumers of the address and website of the ADR by which they are covered.

More information:
http://ec.europa.eu/consumers/redress_cons/adr_en.htm
http://europa.eu/rapid/press-release_MEMO-13-193_en.htm

2013 Data of online purchases by internet users

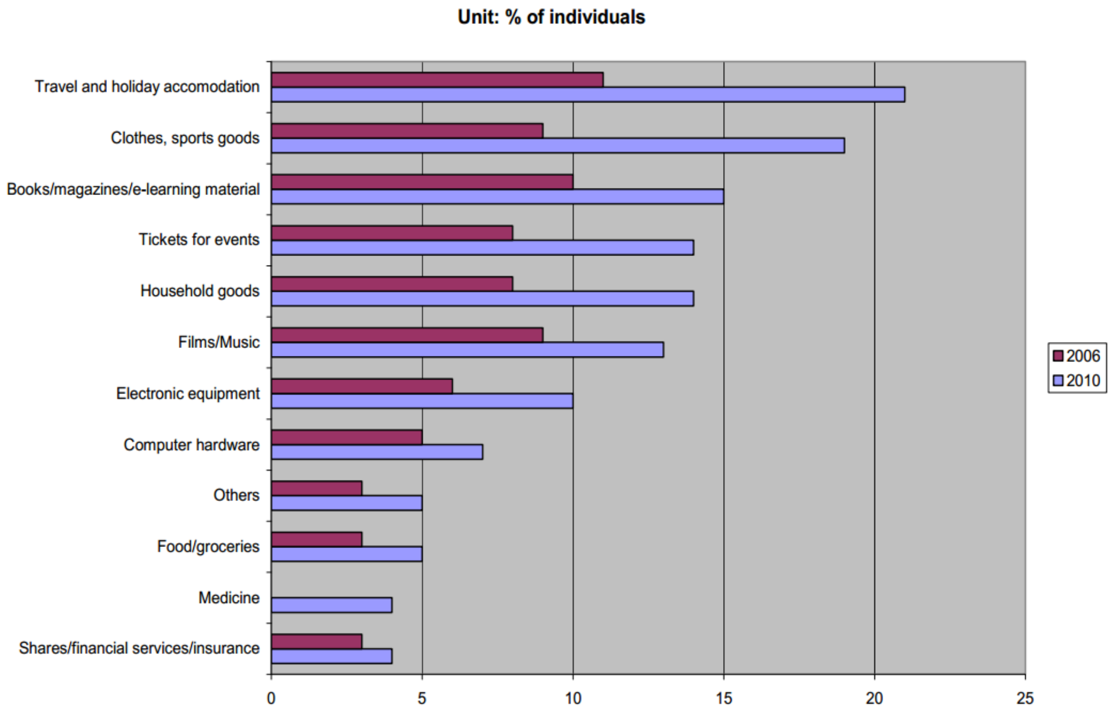
Online purchases by internet users

	% of internet users having used internet in the previous 12 months for purchasing:								
	Total	clothes & sports goods		travel & holiday accommodation		books/magazines/ e-learning material		food & groceries	
	2012	2008	2012	2008	2012	2008	2012	2008	2012
EU28	**59**	**21**	**32**	**21**	**32**	**19**	**23**	**6**	**9**
Belgium	55	7	20	11	28	6	15	1	5
Bulgaria	17	2	11	1	5	2	4	1	2
Czech Republic	43	14	13	5	6	9	5	1	1
Denmark	79	28	40	35	56	20	28	6	9
Germany	77	33	49	29	39	35	41	7	11
Estonia	29	4	12	4	12	3	7	u	3
Ireland	57	11	26	32	43	14	21	3	6
Greece	36	4	15	6	15	5	7	1	(2)
Spain	43	6	14	20	28	7	11	3	6
France	69	27	38	25	39	19	23	6	8
Croatia	36	5	12	2	9	4	12	1	(2)
Italy	29	6	8	9	14	7	8	1	2
Cyprus	35	6	18	7	20	6	8	1	(1)
Latvia	37	9	14	4	11	2	4	0	1
Lithuania	30	1	12	3	6	2	5	1	3
Luxembourg	73	18	32	33	52	35	47	3	10
Hungary	35	5	14	5	13	10	15	1	3
Malta	63	13	36	8	21	13	20	0	u
Netherlands	69	25	37	30	42	24	30	5	9
Austria	60	20	34	15	33	22	29	4	7
Poland	47	15	25	3	8	10	14	6	10
Portugal	35	6	13	9	17	8	10	4	7
Romania	11	2	6	2	4	7	4	0	1
Slovenia	49	9	22	8	20	8	13	4	9
Slovakia	56	13	31	6	15	7	17	1	4
Finland	72	32	41	37	50	24	28	2	4
Sweden	79	20	43	31	60	21	38	3	7
United Kingdom	82	30	51	35	51	27	36	14	21
Iceland	56	14	26	41	40	23	28	3	5
Norway	80	25	36	49	58	25	31	3	(5)

( ) Data with reduced reliability due to small number of respondents.
u Data not reliable due to small number of respondents.

1. Internet users: individuals aged 16 to 74 having used the internet within the 12 months prior to the survey.
2. For more information on the European Year of citizens 2013 see: http://europa.eu/citizens-2013/
3. On the initiative of the General Directorate Internal Market and Services of the European Commission, individuals and stakeholders are invited to give their views on the future of the EU's e-commerce policy, and debate it live with experts, EU policy-makers, and other individuals across Europe, on the web platform http://yourideasforeurope.eu

Figure 19 – Most recent purchase in the origin country by type of products



Source: Eurostat, Information society statistics (2010). Data extracted on 23 June 2011.

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For More Information

Please see the U.S. Commercial Service manual *Preparing Your Business for Global E-Commerce*[14] which provides general information you'll need to complete international sales and how to integrate that information into your business operations from the very beginning of the sales-and-fulfillment process. This manual draws on the experiences of businesses that are now exporting throughout the world; we've included their stories as case studies to help you export successfully.

The U.S. Commercial Service at the U.S. Mission to the European Union can be contacted at +32 2 811 4817; or visit our website: http://www.export.gov/europeanunion.

[14] http://export.gov/%5C/static/Preparing%20Your%20Business%20for%20Global%20E-Commerce%20ad_Latest_eg_main_023772.pdf

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MR - 117

With its network of offices across the United States and in more than 80 countries, the U.S. Commercial Service of the U.S. Department of Commerce utilizes its global presence and international marketing expertise to help U.S. companies sell their products and services worldwide. Locate the U.S. Commercial Service trade specialist in the U.S. nearest you by visiting http://www.export.gov/eac.

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