



A Digital Single
Market for Users

The European digital consumer is the bedrock for Europe's digital economy. With a new European Parliament and College of Commissioners the European Union is primed to deliver on a Digital Single Market for all consumers. EDiMA would like to take this opportunity to take stock of what is needed in the policy and regulatory environment to be addressed to meet the needs of today's digital consumers. We would therefore like to highlight a number of important considerations for a truly user driven digital transformation of the European marketplace:

The next era of e-commerce

A large part of online business now revolves around all sectors using the Internet for growing their business. The online space now provides multiple digital platforms that allow Internet-using businesses to reach global customers and markets: e-commerce platforms, cloud services and the apps-environment. The incredible speed of digital innovation, emergence of disruptive technologies and convergence of services provides consumers with more opportunities than ever before, in the way they connect, interact, communicate, learn, buy and entertain themselves. This comes along with changing expectations regarding convenience, portability and availability, all of which demand a harmonised European Digital Single Market and an overall framework that will cater to new, dynamic and innovative online service offerings.

The consumer and innovation

Customers not only demand innovation, they determine it. In the last few years brand new consumer services have sprung up in the Digital Single Market, in particular driven by mobile and cloud up-take. Within an app environment, consumers have gravitated towards the simplicity, low costs and dynamic nature of these services, many of whom are disruptors changing the way their markets work. It is also essential to recognise the empowered position that the digital consumer today enjoys. Overly prescriptive legislation and regulation are threatening this innovative environment and risk reducing consumer value from such services. Examples include mandated forms of how information is presented for products regulated by Market Surveillance Authorities, splintered competences as determined by the Rome II Regulation, and disproportional obligations on services, such as cybersecurity infrastructure laws.

Consumer protection – strong already

Europe has a strong level of consumer protection embedded in existing EU laws. These horizontal laws provide for principle-based protection across all sectors, namely the Unfair Commercial Practices Directive, the Unfair Terms Directive, the Misleading and Comparative Advertising Directive and the E-Commerce Directive. These laws aim to provide consumers with protections based on the fundamental principles of information, transparency, fairness and redress, and have proven to be future-resistant.

With the fast pace of innovative technologies there may be an increasing need to clarify rules rather than change them, which could be done after a thorough impact assessment by the adoption of guidelines or recommendations. Historically, the European Union has produced a great deal of regulations which are still applicable and appropriate today, but has not always matched this with the necessary scrutiny of implementation which would make such regulatory efforts worthwhile. A coherent and more uniform approach would provide the legal certainty for companies. Therefore, these guidelines need to be developed in close cooperation with national enforcement authorities to ensure homogenous enforcement. The Commission should also spend more resources on monitoring the timely and correct implementation of EU rules by the Member States and take action if necessary, as opposed to creating any unnecessary new rules.

New laws should always take into account this existing framework and be based on evidence along with the checks for proportionality and the effect on future innovation. Where the European Union contemplates the reform of major regulatory frameworks, as for example the audiovisual media or telecommunications regimes, the occasion should be used to review where sectoral needs continue to require stronger protection and where past public policy objectives are no longer relevant in the converged markets.

Consumer Protection – existing obstacles

For both consumers and business alike, the fragmented nature of the European market for digital goods, content and services is still a major stumbling block to growth, jobs and innovation. Fragmentation restricts consumer access to new online services, content and digital goods. This subsequently prevents an Internal Market for such services from developing to its full potential and for the EU to remain competitive globally.

Elimination of barriers to digital commerce within the EU will automatically result in more jobs and new growth. It will also position the EU as a state-of-the-art global trader on a global digitally connected marketplace. SMEs particularly, which are the backbone of the EU's economy, can benefit greatly from the Internet and digital trade routes. With GDP growth realised primarily outside of the developed Western economies, going abroad is essential for new businesses. This is why the EU should stay committed to a global Internet, the free flow of data and refrain from forced data and infrastructure localisation requirements. This will both safeguard European companies' productivity and set the right example for the EU's current and future trade partners.

The establishment of a harmonised and strong set of rules applicable throughout the EU - either through strict Internal Market guidelines or full harmonisation - is the best means to achieving a real European Digital Single Market.

Adopting regulatory frameworks to the digital world, which was the explicit goal of the Consumer Rights Directive, requires an understanding of the digital business ecosystem. Some newly adopted laws have not fully captured the nature of digital offerings and thus applied old techniques to new situations – a recipe for failure – as some provisions are simply not practical. In an increasingly open cross-border environment, adequate protection requires new approaches. This may require flexibility in driving for adequate implementation of obligations and enhanced dialogue between the Commission and the respective enforcement bodies.

Further, the cornerstone of the Digital Single Market should continue to be the country of origin principle. The Commission should put efforts in defending its needs for example by establishing the concept of the lead regulator, and seek to find ways to ensuring cross border market access without undermining consumer protections. Further harmonisation is necessary to fully enable the Digital Single Market.

Last, issues such as copyright, licensing, privacy and data protection rules, maintains major barriers to harnessing the potential of the online environment.

It with these aforementioned points in mind that EDiMA recommends the following:

Compatibility: Any new law or regulation that impacts digital services should require an assessment with regard to its impact on the Internal Market, innovation and SMEs.

Implementation: Existing directives, such as through delegated and implementing acts, must not propose "offline" solutions which are not viable in an online environment.

Consistency: Before changing or creating new rules, the Commission should systematically examine the correct implementation by the Member States and the enforcement of existing legislation.

Single Supervisor: The EU institutions should support and defend a country of origin approach to regulating any aspect of consumer protection and seek further harmonisation where needed.

Global: The European Union should stay committed to a global Internet and the free flow of data, and refrain from forced data and infrastructure localisation requirements.

Single Standard: The European Commission, as part of its mandate on the Digital Single Market, should review all existing consumer regulations with a view to their compatibility with the Digital Single Market and look to create a single set of rules able to transcend borders.

The EU institutions should require all consumer legislation at the Member State level to be notified to the Commission for its compatibility with the Digital Single Market.

The EU institutions should promote codes of practice that are flexible to changes in consumer behaviour that should serve as meaningful guidelines in place of inflexible regulations.

The EU institutions should complete the Digital Single Market in the next five years.