

Ecommerce Europe

Increase data security and trust for consumers and merchants in European cross-border e-commerce

November 2015

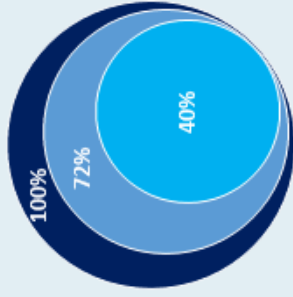


www.ecommerce-europe.eu



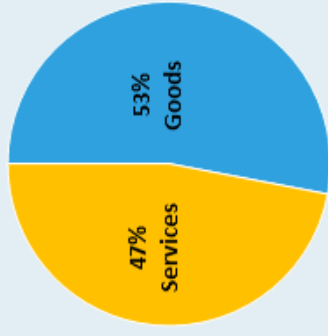


West €209.9 bn +13.3%
Central €106.6 bn +12.9%
South €47.3 bn +15.4%
North €34.7 bn +13.6%
East €24.6 bn +16.8%



817 million people live in Europe
491 million* people use the Internet
274 million* people are e-shoppers
 *excluding people aged 0-14

Forecast 2015
€477 bn Turnover E-commerce Goods & Services



Average spending per e-shopper

6.4%

Europe

€423.0 bn 13.6%
 EU28
 €368.8 bn 13.4%



2.5% eGDP
 € 17.1 trn GDP 2014

UK, Germany, France account for 61% of total E-commerce sales in Europe

2,475,000+ jobs directly or indirectly via E-commerce

715,000+ estimated online businesses

4 billion+ number of parcels annually (f)

Top 5 mature E-commerce countries in turnover (billion)

| | | |
|--|-------------|----------|
| | UK | €127,200 |
| | Germany | €71,200 |
| | France | €56,800 |
| | Netherlands | €13,961 |
| | Switzerland | €12,717 |

| | | |
|--|--------|---------|
| | Russia | €19,947 |
| | Spain | €16,900 |
| | Italy | €13,278 |
| | Poland | €6,541 |

Estimated share of online goods in total retail of goods



"457 million social media users"

Executed by: E-commerce FOUNDATION
www.ecommerce-europe.eu

Powered by: globalcollect™ | ingenico GROUP
 (payments, knowledge, growth)

Info: info@ecommerce-europe.eu
 For reports: info@ecommercefoundation.org
 Twitter: @Ecommerce_EU



Free download at:
<https://www.ecommerce-europe.eu/facts-figures/free-downloads>

ECOMMERCE EUROPE'S RECOMMENDATIONS TO INCREASE SAFETY, TRUST, OPPORTUNITIES, INNOVATION AND CONVENIENCE IN ONLINE SHOPPING FOR CONSUMERS AND MERCHANTS

Ecommerce Europe is the association representing 25,000+ companies selling goods and/or services online to consumers in Europe. Founded by leading national e-commerce associations, Ecommerce Europe is the voice of the e-commerce sector in Europe. Its mission is to stimulate cross-border e-commerce through lobbying for better or desired policy, by offering a European platform for the European e-commerce sector and other stakeholders, and by providing in-depth research data about European markets. Moreover, Ecommerce Europe provides more than 10,000 certified online companies across Europe with a European Trustmark label, with the aim of increasing consumers' trust in cross-border purchases.

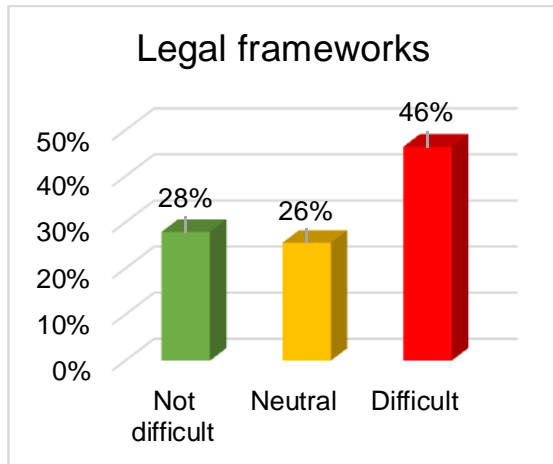
"Digital" changes the way people shop and the way people wish to receive their purchases. The modern consumer wants to shop anywhere, and at any time. This is notable by the fact that nearly all growth in retail comes from e-commerce. With double-digit growth rates, the e-commerce sector is booming. Much more growth is still to be obtained, however. Europe is lagging behind compared to competing markets (mainly the US and China) in shaping a business-friendly climate allowing innovative online companies to

flourish. This means that policy makers should see innovation in the online world as an opportunity, and not as a threat, and should refrain from drawing up differing rules for online and offline activities. The digital world knows no borders, and this should also count for legislation: European e-commerce businesses should be able to profit from the full European single market and its broad consumer base. Only then is the European economy able to keep up globally.

Ecommerce Europe's main objective is to work with the Commission, the Parliament and the Council of the EU towards flexible policy frameworks that facilitate growth and competitiveness within the European e-commerce market. The word "flexible" is essential because the sector grows and evolves quickly, and reviews and updates of legislative frameworks are needed on a frequent basis.

The protection of personal data and privacy are key drivers for trust in the e-commerce sector. Consumers' trust is at the core of the e-commerce industry, and therefore the **fair, safe and transparent use and collection of data** is the key to the growth of the sector, especially when it comes to cross-border purchases. Furthermore, responsible data processing increases consumer convenience in online shopping and is an essential element for innovation in the online industry.

One of the biggest hurdles which prevents traders to go cross-border is the difference in legal frameworks all over Europe.



Description: Perceived level of difficulty for companies selling cross-border.

Source: Ecommerce Europe results of the survey 'Barriers to Growth', 2015.

Also in the field of privacy and data protection the broad variety in national data protection and privacy rules results in overlapping requirements, conflicting national implementations and difficult and diverging enforcement by supervising authorities across EU Member States. In return this results in high additional costs for online merchants that orientate cross-border. Merchants who want to sell cross-border are forced to invest heavily in assessing foreign legal frameworks and make substantive IT system costs to adhere to privacy laws in different European countries¹. The current legal framework on privacy and data protection as set out at a minimum level in the Data Protection Directive 95/46/EC makes it difficult for European online companies, and especially SMEs, to keep up with global competition.

Any amended or new legislation on privacy and protection of personal data should provide the required level playing field to stimulate online sales across the EU, without creating

¹ Ecommerce Europe results survey 'Barriers to Growth', 2015

additional administrative burdens for the industry and should leave enough room for innovation in the market. To this purpose, with this position paper, Ecommerce Europe formulates policy recommendations to European regulators covering the proposal for a new General Data Protection Regulation and the upcoming review of the E-Privacy Directive 2002/58/EC, announced in the European Commission's Digital Single Market Strategy of 6 May 2015.

RECOMMENDATIONS FOR THE GENERAL DATA PROTECTION REGULATION (GDPR)

Ecommerce Europe, which advocates for a workable and fully harmonized legal framework for the protection of personal data, welcomes the efforts made by European policy makers to update the European Data Protection legislation. However, the European e-commerce association is strongly convinced that some key elements of the text need to be modified, in order to prevent the new General Data Protection Regulation from having a negative impact on e-commerce businesses in Europe. A more balanced approach is therefore needed.

1. Lawfulness of processing personal data, profiling and data-driven marketing

Ecommerce Europe believes that the update of the existing legislation on data protection has great potential for optimizing privacy rights for the consumer and regulating in a fair and balanced way the legitimate interests of the industry in data processing, data collection and profiling. However, Ecommerce Europe urges the European institutions to **recognize the**

economic potential of recent technical developments in information/data collection and analysis - such as **profiling, data driven marketing** and the use of **cookies** - which stimulate business innovation and provide opportunities for merchants to optimize personalization and new consumer demands.

The possibility for online merchants to process and analyze data through the creation of profiles is an essential element in e-commerce and much needed, considering the huge number of products and/or services that can be found today in a web shop, in order to provide guidance and assistance to consumers when they shop online. **Profiling of normal personal data without having a legal effect or harm for the data subject should be recognized as normal processing of personal data, possible without any special or new specific regulation and preferably recognized in the legitimate interest of the trader.**

2. Full harmonization of data protection legislation through a risk-based approach without additional burdens for the industry

Ecommerce Europe has long been advocating for **full harmonization of the European data protection legislation**. Legal fragmentation creates legal uncertainty not only for online merchants but also for consumers. The uniformity that will be brought by the Regulation in the European data protection framework has the potential necessary for the stimulation of cross-border e-commerce within the European Union.

Ecommerce Europe urges the European institutions to adopt a **balanced approach in**

the rules for data collection, data processing and data protection. Such a balanced approach is risk-based and focuses on the factual use of data by online merchants rather than a scenario based on potential use and aiming only at a worst case scenario. A **risk-based approach** also differentiates between data with a high privacy impact and data with low- or no privacy impact. European legislators should base legislation on this sliding scale of intrusiveness. Therefore, Ecommerce Europe urges the European legislators to **recognize the industry's potential of self-regulation** and asks them to refrain from regulation when it comes to the collection and processing of data with low or no privacy impact on the consumers, such as, for instance, the size of shoes or clothes when ordering fashion items, which Ecommerce Europe does not consider as sensitive data at all.

3. Support the principle of unambiguous consent

Ecommerce Europe emphasizes that the **privacy impact of personal data processing is context-dependent**. A risk-based consent rule, depending on the specific circumstances and the context of the personal data collection, is the most suitable approach. Therefore, Ecommerce Europe supports the notion of **“unambiguous” consent for the processing of non-sensitive data** of consumers.

Ecommerce Europe urges European legislators not to impose the requirement of explicit consent for the processing of non-sensitive data as this would have a negative effect for the sector. Asking for explicit consent for every processing of personal data that

requires consent, as there is no other ground for lawful processing, would lead to shoppers constantly being required to give such explicit consent, with a consequential negative effect on the shopping experience of the consumers. It also leads to a devaluation of the consent itself, as data subjects will automatically avoid irritation by giving consent without further research to what extent they give their consent. **Unambiguous consent - as adopted in the Council's compromise - would ensure the flexibility needed for businesses to provide a seamless shopping experience** to consumers buying products and/or services online.

4. Right to data portability

Ecommerce Europe supports the principle of data portability. Ecommerce Europe however believes that a general right for data subjects to transmit their data in a commonly used and machine readable format to another controller should not exist towards online merchants that gather personal data of their customers in their own unique format and adapted to the specific kind of contract they enter with the data subject. The unique way they gather data is necessary for the performance of the contract to which the data subject is a party or in order to take steps at the request of the data subject prior to entering into a contract.

A general obligation to provide for data portability would expose online merchants to considerable administrative burdens and costs in shaping their consumer processes and business models in such a way that they could meet the right of the data subject to have all their personal data transmitted to other controllers in a standardized and interoperable

way. Therefore, Ecommerce Europe recommends that in case of adoption of a right to data portability, the right should at least be restricted to situations where:

- the data subject has a legitimate interest in asking for data portability;
- the data for which portability is demanded is not sensitive competition or business information and is fit for revealing without negatively affecting competition for the trader;
- online merchants/data controllers have the possibility to charge reasonable costs for processing data portability;
- the data is fit for portability in a standardized and interoperable way;
- the provision of the data does not affect the privacy rights of other people.

As there are numerous different possible standards that a company could use for storing personal data, Ecommerce Europe furthermore sees a **need for clarification of the concept of “machine-readable format”**, as for the moment it is unclear what this exactly means.

5. A case-to-case, flexible approach when applying the Right to be forgotten and to erasure

Ecommerce Europe asks European regulators for a **simplified and shorter text** on the Right to be forgotten. Ecommerce Europe supports the **less rigid approach adopted by the Council** on this right. The text should not be too rigid because such an approach to the right to be forgotten would mean that any removal request coming from an individual, such as a consumer, should always be granted without taking into account the particularities of the case.

In fact, online merchants have a wide range of legal obligations to keep data on transactions, for example, for taxes or consumer warranties, therefore it would be impossible for them to erase all consumer data at any time. Online shops should have the right to keep that data when necessary. Ecommerce Europe advocates for a **flexible, case-by-case approach when the right to be forgotten is applied**. Such flexibility will allow judges to be able to take into account the other obligations that online merchants already have.

Ecommerce Europe also believes that Data Protection Authorities in the Member States should help online retailers - in a uniform and harmonized way - in evaluating complex requests from consumers, in particular in cases where there is a conflict between fundamental rights. Finally, Ecommerce Europe advocates for safeguards in order to prevent the right to be forgotten from being abused by consumers.

6. Obligation to have a Data Protection Officer

All B2C online merchants process the personal data of all their customers to perform the sales and service contracts they concluded with their customers, like delivery address and bank account number. Almost all SMEs process this data for all their customers and will very soon reach a considerable number of data records they process.

Ecommerce Europe believes that the **costs of designating a Data Protection Officer (DPO)** (either in-house, part-time or freelance) **are incalculable and disproportional for most SMEs** in view of the impact and privacy risks of their mostly limited processing of data in the

course of the performance of their contracts. In this respect, a general obligation to designate a DPO only depending on the processing of a certain limited amount of data records, would put an unnecessary burden on SMEs for even the most elementary processing of data with hardly any privacy risks. If there was a need for regulation that forces traders to appoint a DPO, the rules for the appointment and the qualifications of the DPO should be maximally harmonized across the European Union and should not lay an unnecessary burden on SMEs by having too low a threshold for this obligation. In addition, a system of clear incentives for appointing a DPO should be put in place in order to facilitate smaller companies which have fewer resources.

7. Enforcement by national supervising authorities and one-stop-shop

In the view of Ecommerce Europe, a **one-stop-shop mechanism** in the field of data protection and privacy is **essential to simplify dispute resolutions** between merchants and consumers. According to the latest proposals, the one-stop-shop seems to have developed to a “multi-stop-shop” with more levels of bureaucracy. In the case of a cross-border complaint, at least two data protection authorities have to be involved and have to reach a consensus to solve the case, and in case of a conflict between authorities, even another level - that of the European Data Protection Board - would be brought in.

Ecommerce Europe is concerned as the latest proposals could result in a very long and burdensome procedure for online shops, especially for smaller ones, in the case of a dispute. That is why Ecommerce

Europe urges the European policy makers to create a **single pan-European authority** that has the power to settle cross-border disputes about data processing between businesses and consumers. This will provide for a real one-stop-shop and will ensure that data protection rules are interpreted throughout Europe in the same manner, and will provide legal certainty for online merchants when selling cross-border.

For Ecommerce Europe it is essential that the final Regulation preserves the **one-stop-shop as designed by the original Commission's proposal**. It is the main element that could really help traders in taking advantage of the potential of data driven marketing innovations. The one-stop shop should provide for a clear and workable instrument with simple, transparent and easy procedures to deal with cross-border issues, with only one authority responsible for adopting decisions.

Ecommerce Europe furthermore urges that **enforcement by national authorities on privacy and data protection should always be:**

- equal and uniform all over the EU;
- at the same level regarding operational and financial resources;
- targeting only relevant infringements based on a clear insight into the markets concerned and on a coherent strategy and clearly published and communicated uniform guidelines for enforcement, fines and sanctions;
- sanctions which are not excessive or infringing/hampering competition;
- based on regular yearly or half-yearly consultation of and feedback from relevant

stakeholders from the industry, consumer/data subject organizations.

RECOMMENDATIONS IN VIEW OF THE REVISION OF THE E-PRIVACY DIRECTIVE

Ecommerce Europe welcomes the upcoming revision of the E-Privacy Directive 2002/58/EC. It is crucial that during the process of revision of this directive European legislators will recognize the important role that electronic communications and data-driven marketing play in the business model of online merchants.

Also, Ecommerce Europe asks European policy makers to maintain an integrated approach towards data protection and privacy in order to avoid double regulation, as some rules related to E-Privacy will already be included in the General Data Protection Regulation, once adopted.

1. Allow for easy communication between merchants and consumers

Many online merchants have no other resources to communicate with potential clients than the contact data they received from the consumer in the course of an online relationship. If they had to limit their electronic communication to client relationships in which they came to a contract on the sale of a good, service or digital content, many e-commerce business models would cease to exist. Moreover, many online merchants in their data driven marketing often make use of (sub)contractors who have no direct relationship with the client but should be able to contact them on behalf of the e-commerce

company - for instance, for customer service purposes, delivery and payments. When there is no online relationship with the consumer, electronic commercial messages should be allowed only with prior unambiguous consent of the consumer.

Therefore, Ecommerce Europe supports the idea that an online merchant should be allowed to contact the consumer **in an unsolicited way with electronic commercial messages** regarding all his or her products, services or digital content (naturally always including an easy opt-out mechanism for the consumer), provided that there is a prior online relationship between the consumer and merchant related to the orientation of and the purchase or delivery of goods, services or digital content by this merchant, in which the consumer in the course of the contract or the pre-contractual phase has provided the merchant with his or her electronic mail address, for instance, by placing an order, making a customer account, communicating with customer services in the course of after or pre sales services or subscribing to a newsletter.

In the upcoming revision of the E-Privacy Directive, Ecommerce Europe also asks European regulators to clarify the definition/concept of “electronic message”, to be ready for all the innovative solutions that have been developed in the meanwhile and will be developed in the future, such as advertisement messages through instant chat apps, i.e. WhatsApp.

2. Update cookie rules

Ecommerce Europe believes that the current cookie rules are **a suboptimal solution for** both the online merchant and the consumer

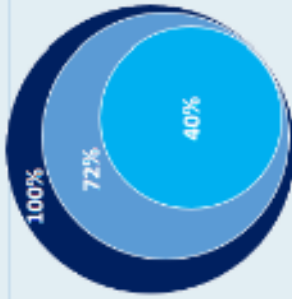
and cause substantial compliance costs for businesses. Therefore, Ecommerce Europe recommends European policy makers to take into consideration the **evaluation of the cookie rules** in view of the revision of the E-Privacy Directive and advocates for a reform of such rules towards a more practical and transparent instrument which is easy and cheap to comply with, especially for smaller web shops.

3. Enforcement by national authorities

Ecommerce Europe has remarks for what concerns the enforcement by national authorities (art. 15a - Implementation and enforcement) on electronic communication and data driven marketing. For this article of the E-Privacy Directive the same remarks made for the enforcement of GDPR apply. Please find more detailed information on this position at pages 7-8, point 7.

Ecommerce Europe Association Data at a Glance 2015

West €209.9bn +13.3%
 Central €106.6bn +12.9%
 South €47.3bn +15.4%
 North €34.7bn +13.6%
 East €24.6bn +16.8%

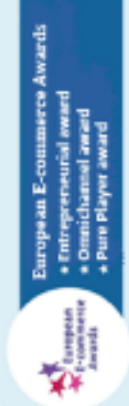


817 million people live in Europe
 491 million* people use the Internet
 274 million* people are e-shoppers
 *excluding people aged 0-14

Our mission:
 To unlock the potential of cross-border e-commerce in Europe



June 6-8 2016
 Barcelona



GOMSEC

Global Online
 Measurement Standard B2C E-Commerce

2,475,000+ jobs directly or indirectly via e-commerce
 715,000+ estimated online businesses
 4.0 bn+ number of parcels sent annually (f)

Round Tables
 Meetings in 10 European cities for e-commerce experts and invitees

Europe EU28 €368.8 bn +13.4%

European Reports

Reports include country profiles, trends & infographics.

- Reports include these countries:
- Eastern: Rom, Rus and Ukr
 - Western: Belgium, Fr, Ire and UK
 - Southern: Gre, It, Port, Spa and Turk
 - Northern: Den, Fin, Ire, Nor and Swe
 - Central: Aus, CH, Ger, Hun, Pol and Slo

18+ leading e-commerce associations

25,000+ members
 34+ preferred business partners

Ecommerce Europe
 www.ecommerce-europe.eu
 Ecommerce Foundation (June 2015)
 www.ecommercefoundation.org
 Info: info@ecommerce-europe.eu
 For reports: info@ecommercefoundation.org
 Twitter: @Ecommerce_EU
 Free download at:
<https://www.ecommerce-europe.eu/files-figures/free-downloads>


Ecommerce Europe

Rue de Trèves 59-61

B-1040 Brussels - Belgium

Tel: +32 (0) 2 502 31 34

www.ecommerce-europe.eu info@ecommerce-europe.eu

 @Ecommerce_EU