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Economic and Monetary Affairs

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Internal Market and Consumer Protection

Roadmap to Digital Single Market

NOTE

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Roadmap to Digital Single Market

Prioritising Necessary Legislative Responses to Opportunities and Barriers to e-Commerce

NOTE

Abstract

This note reviews the state of play of the actions promoting the Commission's Digital Single Market within the framework of the Digital Agenda for Europe and the Single Market Act. It identifies priority actions according to economic growth potential, the rationale and overtime variation of EU legislation, and the degree of consensus or lack thereof. Finally, it highlights synergies and interdependencies between the various actions and offers a rough estimate of the time schedule for their implementation and expected impact.

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AUTHORS

Mr Alberto BOLOGNINI, Economisti Associati
Ms Elettra LEGOVINI, Economisti Associati

RESPONSIBLE ADMINISTRATORS

Mariusz MACIEJEWSKI
Fabrizio PORRINO
Policy Department A – Economic and Scientific Policy
European Parliament
B-1047 Brussels
E-mail: mariusz.maciejewski@europarl.europa.eu

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ABOUT THE EDITOR

To contact the Policy Department or to subscribe to its monthly newsletter please write to:
Poldep-Economy-Science@europarl.europa.eu

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CONTENTS

LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
B2C	Business to Consumer
CESL	Common European Sales Law
eID	Electronic Identification Document
DSM	Digital Single Market
EU	European Commission
GDP	Gross Domestic Product
ICT	Information and Communications Technology
MS	Member State
NMW	New Member State
ODR	Online Dispute Resolution
PSPs	Payment Service Providers
SEPA	Single European Payment Area
SMA	Single Market Act
SMEs	Small and Medium Enterprises
US	United States

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EXECUTIVE SUMMARY

Background

Over the last few years, the European Commission has proposed a number of actions to promote the Digital Single Market, exploit existing growth opportunities and remove barriers to e-commerce. The milestones of this reform agenda were articulated in some detail in the Digital Agenda for Europe that includes a specific Digital Single Market priority composed of twenty-one different actions, some of which considered key and summarised in strategic terms in the Single Market Act. In January 2012, the Commission has also released a specific Communication on e-commerce and online services[1] (Annex 1) which updates the strategic orientations of the two previous policy documents by addressing new issues, and complementing the proposals formulated in a prior 2009 Communication focusing specifically on cross-border e-commerce issues.

As a result of the existing action plans the Commission has tabled a number of legislative proposals, some of which have already been approved. These initiatives, however, have not necessarily been submitted in the order that one might have expected, considering the Commission's prioritisation criteria and the schedule as originally planned. In particular, in response to a specific request from the European Council, the Commission proposed the latest version of its roadmap to achieve the Digital Single Market by 2015 in its Annual Growth Survey for 2012. The roadmap highlights the actions that in the Commission's opinion require fast-track approval. Not all of these actions are the same that used to be considered as crucial in the previous years.

Aim

The aim of this note is to review the state of play of the actions promoting the Commission's Digital Single Market within the framework of the Digital Agenda for Europe and the Single Market Act. Based on existing secondary sources, it identifies priority actions according to economic growth potential, the rationale behind proposed EU legislation, and the degree of uncertainty of expected impacts. Finally, it highlights synergies and interdependencies between the various actions and offers a rough estimate of the time schedule for their implementation and actual materialisation of effects on the market.

Main Findings and Recommendations

If a roadmap should be defined by prioritising legislative measures based on the approximate order of magnitude of their expected economic impact, the Commission 2012 proposal would be broadly confirmed and both legislation on the European Common Sales Law and on e-identification and authentication would appear as large potential market enablers, as far as e-commerce and the removal of related market barriers are concerned. However, it is worth noting that also the Directive on the re-use of public sector information has a potential impact of comparable size, although more dependent on enabling innovative online services and digital goods – and as such much more uncertain in its concrete materialisation. However its overall impact on innovation could therefore be even larger. Forthcoming legislation on collective rights management in the digital environment would be caught between the priority legislation above and the other proposed measures. All the remaining proposed legislative measures have impacts of comparable size; the margin of error inherent in existing estimates does not provide a sound basis for any ranking based

[1] Commission Communication – A coherent framework for building trust in the Digital Single Market for e-commerce and online services COM (2011) 942.

on economic criteria only. It is worth noting that the economic impact of major legislative actions can sometimes be smaller than that of technical regulations left to Commission's and Member States' discretion as demonstrate, for instance, by the case of the modernised customs code.

Proposed legislation on the Common European Sales Law is the only measure with potentially large effects without requiring any prior as a condition for effectiveness. On the contrary, the success of actions on e-identification and authentication, re-use of public sector information and, possibly in the future, e-payments also depends on effective ICT standardisation and involvement of the ICT industry in standardisation work for European public purposes. Similarly, the bulk of the possible short-term impact of legislation on e-identification and authentication is synergic with the approval of proposed legislation on e-procurement and of the related action plan. The same piece of legislation can be a precondition for a number of other e-government trade facilitation policies, while its possible long-term impact on the payment systems or on cloud computing – however uncertain - is hardly conceivable unless some kind of standardisation agreement is reached with related industries. Legislation on data protection and re-use of public information are synergic, the first being an enabling condition for the latter; the same is true for any possible future policy initiative on trustmarks and cloud computing. Effective cloud computing, in turn, would appear another facilitating factor for the implementation of other e-government trade facilitation measures. Legislation on collective rights management and orphan works appear relatively standalone; the latter could even represent an enabling factor for the effects of the reform on the re-use of public sector information to materialise. The **cross impact matrix** below summarises some of the synergic relationships as described in the literature and in existing policy documents.

Table 1: Cross impact matrix

	E-identification authentication	Re-use of PSI	E-payments	E-government trade facilitation	Cloud computing	ADR/ODR	Trustmarks
ICT standardisation	+	+	+	+	+		
E-procurement	+						
Common European Sales Law						+	+
E-identification authentication			+	+	+		
E-payments							+?
E-government trade facilitation			+?				
Data protection		+	+		+		+
Trustmarks					+?	+	
Cloud Computing					+		
Orphan Works		+					

Available data show that the Commission has been broadly correct in its 2012 proposed roadmap for the Digital Single Market if expected economic growth is taken as a judgment criterion; however, **strategic priorities have varied over time** since the Digital Agenda for Europe was first proposed because of political and other reasons. It could therefore be worth considering that in the future mid-term strategic documents these **prioritisation criteria should be made more explicit in the text and possibly tentatively quantified in terms of expected economic growth in the related impact assessment to make them more transparent and open to external discussion and scrutiny**. This would also subsequently help identify prioritisation changes for reasons that are others than economic growth. Moreover, **if synergies were better highlighted from the beginning of the legislative programme, the rationale behind the strategy and the related chain of implementing actions would become even clearer in the likely timing of the rolling out of related effects**. This can be done by means of a number of techniques ranging from the very basic cross impact matrix, which has already entered the common EU structural funds practice, to more sophisticated graphical forms of scenario analysis showing linkages and interdependencies. Incidentally, providing an assessment of the overall strategy, as the Commission seems intentioned to do with the mid-term review, would allow to better capture the possible **market impact of complex strategies** requiring a chain of different enabling measures. Moreover, this approach could help reach

some harmonisation in the way impacts are currently calculated by the relevant Commission services and make estimates more comparable. The prioritisation criteria developed through this range of techniques could for instance be included as annexes to the mid-term review of the Digital Agenda for Europe and serve as a reference for subsequent more detailed impact assessment of the individual measures.

Policymakers may then find it appropriate to **balance** the increasing role played by the Commission through the various phases of Digital Single Market policy development and implementation by exercising greater scrutiny. This may be done (i) by including greater ex post reporting and accountability requirements, as has increasingly been the case in the recent proposals for regulation, (ii) by a greater ex ante involvement of the European Parliament in **overseeing the rationale behind the prioritisation of actions**, and opening up the debate on the subject to raise awareness on its potential economic dimension. The impact assessment of the mid-term review of the Digital Agenda for Europe could be the instrument to achieve these aims.

As shown in Table 2 below, results from this exercise confirm that the potential impact on economic growth of the Digital Single Market agenda is far from trivial and therefore the sequencing of the various actions – if managed appropriately - could also be used as a tool to foster growth and respond to the current economic crisis.

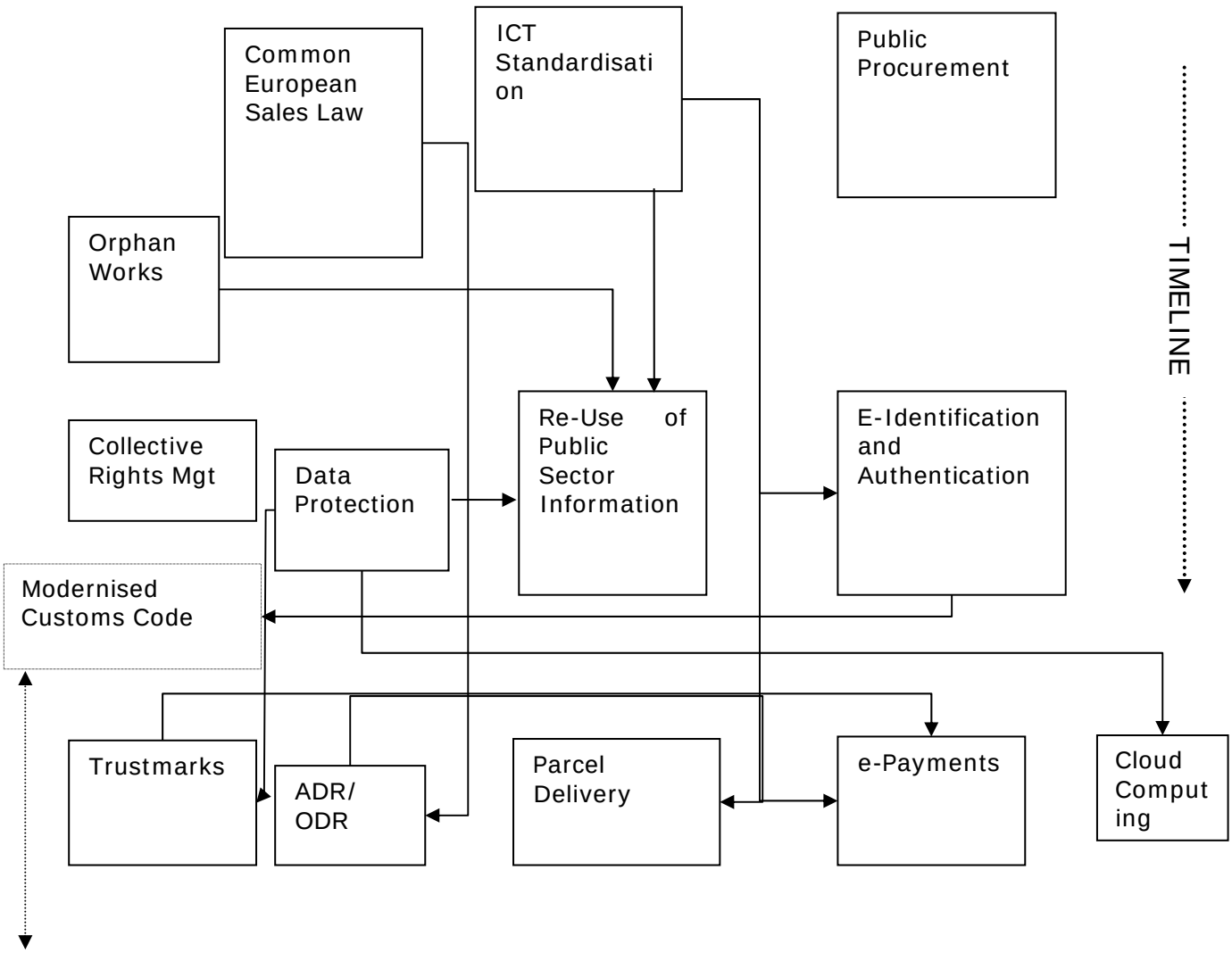
Table 2: Estimated annual impact on economic growth of the DSM agenda items

Proposal	Size of Enabled Market	Savings in Costs of Compliance	Price Efficiency-related Consumer Surplus
Common European Sales Law	EUR 13-90 billion (EUR 1-9 billion)	EUR 1.5- 3billion (EUR 100-300 mln)	< EUR 2.5 billion? EUR 1.8 billion?
Data Protection	n.a.	EUR 4.3 billion	n.a
E-Identification Authentication	>EUR 15-30 billion	n.a.	EUR 0.5–1.5 billion
ADR/ODR	n.a.	EUR 3 – 13 billion (EUR 100-200 mln)	< EUR 2.5 billion? 0.7 billion?
Collective Rights Management	> EUR 4-5 billion	EUR 5-10 mln	n.a.
Orphan Works	EUR 1-5 billion	EUR 1.5 billion	n.a.
Re-use of Public Sector Information	EUR 40 billion?	n.a.	n.a.
TOTAL	**> EUR 100 billion**	**EUR 10-20 billion?**	**> EUR 5 billion**

Figures strictly referred to e-commerce are in brackets.

Roadmaps could be devised to maximise impact in the shortest possible period of time and programming policymaking accordingly, as well as to highlight the possible pros and cons of the various courses of action and the logical linkages between them, as the flowchart in Figure 1 overleaf sketches out, based on the review of limited existing data.

Figure 1: Flowchart for roadmap prioritisation highlighting the synergies between the various proposed measures



Legend: the two-way dotted arrow associated with the Modernised Customs Code is testament to the peculiar status of this measure, whose effects are expected to start playing out from the deadline when this measure will be implemented and do not depend on the timing of approval. In all likelihood, the original deadline for implementation (June 2013) will not be respected. The issue at stake now is therefore by how long more adoption of this measure will be delayed.

BACKGROUND INFORMATION ON E-COMMERCE AND ONLINE SERVICES

KEY FINDINGS

- It is not possible to directly measure by official statistical means the share of employment, GDP or the value added of e-commerce and online service activities. Some private institutions have provided proxy estimates, but these are neither equally reliable nor comparable.
- The relation between e-commerce and economic growth has so far been only empirical and observational in nature. Proponents of this relationship have borrowed from a number of possible underlying drivers, but these have never been validated by rigorous theory. The Internet economy has been variously attributed from 10% to 20% of GDP growth in mature developed economies, displaying an ever-increasing trend over time; estimates for middle-income countries, amount to around half that share. It is reasonable to assume that similar patterns also apply across the EU. In 2010 it was estimated that a cumulated 4% GDP growth would be possible till 2020 by removing all existing barriers to the digital single market.
- The size of e-commerce and online services is very uneven across Europe with a clear North-South divide. Estimates on the Internet economy vary from 6-7% of GDP in the UK to some 1% in some NMS. The EU estimated average should lie around 4% of total EU GDP, of which roughly half is represented by e-commerce.
- The total market for B2C e-commerce in Europe has been variously estimated at EUR 170-280 billion in 2010 with 15-20% annual growth rates. On the whole, the size of the retail B2C market is at present broadly comparable with that of the total EU market for cross-border retail trade (EUR 175 billion). With an estimated market size of some EUR 34-47 billion e-commerce already accounts for the bulk of EU cross-border distance sales (EUR 60-70 billion).
- There are large sectoral differences in the use of e-commerce and diverging views on whether this is a structural feature or stages in a broader development path. E-commerce is particularly widespread in digital goods and services (e.g. music, books, games, gambling,[2] banking and insurance), highly standardised products (e.g. flights, tickets, etc.) and sales based on catalogues (e.g. tourism, spare parts and, increasingly, clothes). For the time being, it is commonly believed that products with a low value/weight ratio or requiring sensory experience would not lend themselves well to e-commerce.
- For some of these sectors, the share of e-commerce turnover is hard to quantify accurately. Some 40% of the turnover of travel agencies is estimated to take place online, and 25%-30% of the sales of cultural goods. E-commerce in physical goods has some importance as far electronics and clothing are concerned, but all in all digital retail currently accounts for only 4% of related total retail turnover, at most.

[2] According to research recently appeared in Italy, 57% of the EUR 19 billion Italian e-commerce industry would be composed of leisure services (mainly online poker and gambling); tourism would account for another 25% of the total and insurance would represent the third sector in order of importance with 6% of total e-commerce turnover.

- B2B commerce is much more developed than B2C. The share of B2B and Government Internet transactions is four times that of B2C and comparatively increasing. On the whole total related turnover should be in the range of EUR 800-1100 billion, of which roughly EUR 150-200 billion cross-border within the EU. It is reasonable to assume that total cross—border e-commerce should be in the region of some EUR 180-250 billion roughly equal to 10% of EU intra-trade flows.
- The number of European consumers who make purchases online is lower than in the US but catching up fast, mainly because of income convergence and Internet availability in the NMS. It is now estimated at 57% of total Internet users, as against 66% in the US; this translates into some 40% of the EU population, which remains below Commission targets.
- It is estimated that some 72% of total e-commerce transactions are domestic, 20% are cross-border within the EU, while the remaining 8% is cross-border involving countries outside the EU. The share of cross-border B2C is broadly comparable. In population terms, 9% of the EU citizens make online cross-border purchases, which is not surprising in absolute terms, but again well below Commission policy targets.
- Consumers' propensity to make cross-border purchases online appears partly determined by the size of their country and the availability of neighbours sharing the same language. The largest share of cross-border B2C is to be found in Malta, Austria, Denmark, Ireland and Cyprus. In relative terms the propensity of Southern Europe to cross-border B2C is higher than in Northern Europe (see Annex 2). However, in Eastern and Southern Europe the share of consumers engaging in cross-border B2C tends to be negligible in absolute terms and at any rate these, are countries where the share of consumers who buy online is generally low.
- Propensity to cross-border e-commerce when measured in terms of Internet users depends on exogenous factors that have not yet been investigated in detail (i.e. possibly cultural - including previous familiarity with postal sales -, legal and logistical factors); conversely, it does not correlate with any macro variable such as Internet penetration, per capita income or the availability of domestic retailers active online. Contrary to widespread belief, consumers' propensity to e-commerce in general seems poorly correlated with Internet speed.
- Policy produced so far has heavily relied on evidence provided by surveys and opinion polls. However, it has been noted that consumers' actual behaviours do not necessarily coincide with their statements. Caution should therefore be used before extrapolating estimates of anticipated market impact of policy measures from stakeholders' expressed opinions.
- The demand and supply sides of the e-commerce market tend to move in parallel on a European scale. Slightly more than half of EU retailers use e-commerce as a channel, but only approximately one in five engages in cross-border online transactions. However, there are notable variations at MS level also depending on the overall structure of the retail industry and its concentration.
- One of the drivers of e-commerce-related economic growth is believed to be price efficiency. Preliminary research shows that at domestic (i.e. national) level, online prices can be on average 10% lower than their offline counterparts. Estimates of potential consumer surpluses due to this factor vary from some EUR 80 billion for the EU retail market as a whole, to EUR 100 billion for the public procurement market. A mainstay of the Commission's policy is that additional price

efficiency would be possible if consumers had the chance to compare prices cross-border. This opportunity is only offered by a limited number of price comparison sites; partly for this reason, only few consumers can actually reap the related benefits.

- However, e-commerce also leaves considerable room for price discrimination based on customer profiling and price customization software and it is unclear what share of the consumer surplus above can actually materialise in the retail market. There are very limited sources available about how widespread the price customisation practice is and its possible effects on the market.
- The limited offer of price comparison sites and the widespread impossibility of finalising an e-commerce cross-border transaction based on the country of residence of the buyer has been often construed as a possible indicator of territorial price discrimination agreements, common to the US-Canada context, as well. In the European case, the 'border-effect' can also be caused by limited product comparability (e.g. warranties and other features), as well as by sellers' reluctance to take on the risks associated with transactions under the buyer's national judicial system. The cost and paucity of the available payment systems and poor parcel logistics – particularly return ones – are often mentioned by businesses as obstacles hindering the provision of cross-border e-commerce services in physical goods.
- Digital goods can provide both additional value to consumers because of the possibility of immediate or almost immediate access to an unprecedented wide range of contents and overall environmental benefits to society because of decreased material consumption. Their pricing and management by means of property rights and consolidated business models is, however, made complex by their non-rival, scalable, discrete, a-spatial, and recombinant nature.
- In the field of digital goods, instead, a major obstacle is still represented by the burdensome clearance procedures for the use of intellectual rights; indeed, these are still insufficiently harmonised and not expedient enough in the EU online environment, as compared to the situation in the US, Japan or South Korea where the digital goods market is considerably more developed.
- On a more general and global basis, the uptake of e-commerce has been hindered by concerns over online frauds and the security of the Internet as a marketplace. In particular, trade in digital goods has been the object of widespread online piracy and copyright infringement.
- The world over, traditional legal systems have struggled to cope with the emerging figure of the 'prosumer' and the increasingly blurred distinction between consumers and producers in certain Internet environments and it is not clear when consumers' rights protection applies and when consumers actually qualify as entrepreneurs and are subject to related taxation provisions. There are little reliable estimates about the size of C2C[3] commerce in the EU. A radically new phenomenon is also represented by the emergence of global online currencies and game currencies.

[3] The FTI study on parcel delivery estimates the 2008 a CEP (courier, express, parcel) market worth EUR 42.2 billion. Of this 5% (i.e. some EUR 2.11 billion) can be attributed to C2C. The related cross-border component should be 15-20% of the total, is between EUR 310 and EUR 420 million.

1. THE AGENDA TO OPEN THE DIGITAL SINGLE MARKET

1.1. Background

Over the last few years, the European Commission has proposed a number of actions to promote the Digital Single Market, to exploit existing growth opportunities and to remove barriers to e-commerce. The milestones of this reform agenda were articulated in some detail in the **Digital Agenda for Europe**[4] that includes a specific Digital Single Market priority composed of twenty-one different actions (see Annex 1 for a summary of contents), some of which considered key and summarised in strategic terms in the **Single Market Act**.[5] In January 2012, the Commission has also released a specific Communication on e-commerce and online services[6] (Annex 1) which updates the strategic orientations of the two previous policy documents by addressing new issues, and complementing the proposals formulated in a prior 2009 Communication focusing specifically on cross-border e-commerce issues[7] (Annex 1). The Commission's agenda has also been shaped by a number of **European Parliament's resolutions** highlighting strategic issues for the Digital Single Market and in particular by the resolution on Internet Governance the Next Steps (June 2010) and that on Completing the Internal Market for e-Commerce (September 2010). More recently (April 2012) a resolution outlining strategic orientations on a Competitive Digital Single Market – e-Government as a Spearhead has also been approved.

The Digital Agenda for Europe is undergoing a mid-term review that will be accomplished by the end of the year and will likely result in new policy formulation, for instance in the areas of security, cloud computing or next generation networks. In the meantime, as a result of the existing action plans the Commission has tabled a number of legislative proposals, some of which have already been approved. These initiatives, however, have not been submitted in the **order** that one might have expected, considering the Commission's **prioritisation criteria** and the schedule as originally planned. In particular, in response to a specific request from the European Council, the Commission proposed the latest version of its roadmap to achieve the Digital Single Market by 2015 in its **Annual Growth Survey**[8] for 2012. The roadmap highlights the actions that in the Commission's opinion require fast-track approval. Not all of these actions are the same that used to be considered as crucial in the previous years. The changing status of these initiatives (from priority to secondary, and vice versa) may be indicative of (i) their stage of development and/or (ii) the degree of political consensus reached around them reflected, *inter alia*, by Parliament pressure. The **nature** of the initiatives proposed in the Digital Agenda for Europe has also changed over time. For instance, the explorative action on alternative dispute resolution mechanisms has risen to the rank of legislative proposal. Conversely, two actions were irreversibly aborted, while the revision of the e-commerce Directive has been downgraded to a simple Communication.[9]

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[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Digital Agenda for Europe', COM(2010) 245 final/2.

[5] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Single Market Act – Twelve levers to boost growth and strengthen confidence: "Working together for a new growth", COM(2011) 206 final.

[6] Commission Communication – A coherent framework for building trust in the Digital Single Market for e-commerce and online services COM (2011) 942.

[7] Commission Communication On Cross-Border Business to Consumer e-Commerce in the EU, COM(2009) 557

[8] Commission Communication, 'Annual Growth Survey 2012', COM(2011) 815.

[9] The revision of the e-commerce Directive was dropped from the agenda and replaced with a Communication. In a 2006 study, 43% of the interviewed firms stated that cross-border sales would increase if the country of origin principle were followed. See Flash Eurobarometer, 'Business Attitudes Towards Cross Border Sales', 2006.

1.2. Scope of the Commission's Intervention

The Commission's definition of the Digital Single Market assumes a number of economic justifications for policy action. These go beyond the traditional removal of **administrative and technical barriers** to the single market and increasingly address also the issue of e-government trade facilitation services, as can be for instance the case for VAT and customs (see box 1 below). Economic justifications also include the redressing of perceived **market failures**, particularly those attributed to insufficient private incentives for collective actions and coordination problems. Unprecedentedly, the Commission has also addressed by legislative means cases of cross-border price distortions in regulated markets due to the possible **regulatory capture** by the incumbent of national regulators as was the case for roaming. Needless to say, while the removal of administrative and technical barriers is generally straightforward, market failures are inevitably more controversial on two accounts: for one, they are more difficult to demonstrate empirically, and secondly, they don't necessarily find a solution in their opposite policy alternative. As a matter of fact, the public intervention scenario is often equally exposed to the risk of Government failure.

Box 1 - VAT and Customs as Examples of New Barriers in the Digital Environment

The emergence of e-commerce has had an impact on, among others, customs administrations worldwide and their workload. The modernised customs code[10] originally scheduled for implementation in 2013 is to address the problem of the heterogeneity in IT solutions, customs rules and procedures that apply in the different MS. Traders operating in more than one MS have to comply with different conditions for e-access to customs, which is costly for them. There is also a lack of common data requirements and differences in e-protocols between the various administrations. Ideally, to remove these new digital barriers, the customs interface should be presented in the same form, and customs authorities should be inter-linked so as to be able to act as if they were a single authority. This could allow traders to lodge their declarations and notifications directly with customs from their own IT system and eventually be linked one day to secure internet payment systems. It is evident that if traders had a single access point for customs clearance and information systems, they would have to provide these data only once and this would allow to save on costs. However, because of the practical technical harmonisation difficulties experienced by the MS and related costs, the Commission has proposed to postpone the deadline for implementation to 2020. In the specific field of B2C trade facilitation, the Commission has also recently proposed a draft regulation (282/2011 still pending for approval) building upon the recently introduced "one-stop shop" regime for EU businesses trading in digital goods that will be enforced starting from January 2015 and possibly extended to goods other than digital ones in the near future. This will represent a challenge for tax administrations and businesses alike due again to the need to set up administrative practices and IT systems which are duly compliant with the future legal requirements. The regulation aims at clarifying those aspects (definitions, scope of the schemes, reporting obligations, identification, exclusion, VAT returns, currency, payments, records) for which a common understanding is needed before designing the IT systems. Other measures, however, notably relating to the criteria for the determination of the location of the customer, which can be controversial in a digital environment, will be proposed at a later stage.

Similarly, the trade-off between transparency obligations and compliance costs, one of the problem areas of the directive, is to be analysed in the light of other proposed provisions. See on the subject: DLA Piper, "EU study on the legal analysis of a Single Market for the Information Society – New rules for a new age?" November 2009.

[10] PwC, Implementation of the Modernised Customs Code, European Parliament. Directorate General for Internal Policies, Policy Department Economic and Scientific Policy, May 2012.

A particular feature of many Commission proposals in the Digital Single Market area is that they are often motivated by **a blend of different justifications** – some directly related to the single market as such, and others to the removal of market failures. Moreover, it is worth noting that the proposed initiatives are rarely inspired to the sole objective of enabling economic growth; instead, they often attain to a number of other parallel objectives, including the protection of consumers' rights, environmental goals or the preservation of cultural diversity; although perfectly legitimate per se, the latter sometimes compete with the above imperatives of economic growth and barriers removal.

Technically speaking, the Commission's approach to policymaking in the Digital Single Area has increasingly repealed – especially over the last few years - **the minimum harmonisation model** based on a series of Directives in favour of a **stronger centralised regulation**. The rationale behind this course of action is that the Directive instrument leaves too much margin of manoeuvre for the creation of internal barriers in the digital environment, as the experience with the e-signature Directive demonstrates. Similarly, **recommendations and other consensus-based soft law instruments** are increasingly considered **insufficient** to spur real action, as was the case for SEPA, collective rights management or ADR, and have preferably been replaced by hard regulation. As a result of these trends, the time horizon of the impact of approved initiatives depends less and less on the time left to Member States for transposing the actual content of the legal texts, but rather on the Commission's savvy in managing the implementing and administrative acts at its own discretion, often in untested areas. Therefore, it can be argued that European policymaking in the digital single market area is moving from one type of **possible risk of implementation failure** to another; the risk is no longer with Member States' possibly opportunistic and protectionist behaviours; rather, it is increasingly connected with possible management failures on the part of the Commission, a considerable part of which is represented in the new and more proactive approach to standardisation risk.

Policymakers may therefore find it appropriate to **balance** the increasing role played by the Commission through the various phases of Digital Single Market policy development and implementation by exercising greater scrutiny. This may be done (i) by including greater reporting and accountability requirements, as has increasingly been the case in the recent proposals for regulation, (ii) by a greater involvement of the European Parliament in **overseeing the rationale behind the prioritisation of actions**, and opening up the debate on the subject to raise awareness on its potential economic dimension.

The impact assessment of the mid-term review of the Digital Agenda for Europe could represent the right instrument to achieve these aims, to decide on alternative options for the DSM policy problem, and to adequately describe the **interdependencies and feedback mechanisms** of the measures proposed. In doing so, it should clearly highlight how the achievement of certain economic impacts might ultimately depend on the synergic action of different measures in different fields, each of which would be insufficient on its own to trigger the expected results. This could also better clarify the rationale behind sequencing of actions, irrespective of the fact that they are the responsibility of different Commission services.

1.3. State of Play

At the time of writing, the state of play of the various legislative actions proposed is the following: three of the nine legislative actions originally proposed have already been approved, and **three of them are now explicitly highlighted as priority actions**, including the Common European Sales Law – which was not a key action in the Digital Agenda for Europe – but has now risen to such status. There are a total seven legislative proposals still pending for approval, namely:

- The **regulation on e-identification and authentication** replacing the former e-signature Directive submitted by the Commission in June 2012 and considered a priority action in the roadmap;
- The **regulation on a Common European Sales Law** complementing the Consumer Rights Directive and submitted for approval in November 2011, also considered a priority action in the roadmap;
- The **proposed directive on consumer alternative dispute resolution together with the regulation on consumer online dispute resolution**, both also tabled in November 2011;
- The comprehensive **regulation on data protection** pending before Parliament since January 2012;
- Proposed legislation on **collective rights management and intellectual rights licensing for online works** submitted in July this year after considerable delay and also considered a priority action in the roadmap;
- The proposed **directive on orphan works** tabled in April 2011 and for which an agreement has reportedly been reached;
- The proposal for a **revised directive on re-use of public sector information** also submitted in December 2011.

Other priority actions envisaged in the Commission 2012 Roadmap but not dealt with in the Digital Agenda for Europe include the recently issued implementing guidelines on art. 20 of the Services Directive to eliminate sales restrictions based on nationality or residence (already mentioned as a priority in the 2009 Communication); and the release of a Commission Proposal on online payments as a follow-up to the Commission Green Paper on the subject (first mentioned in the Single Market Act, but followed up only in the 2012 Communication). It is unclear at this stage whether Commission proposals on online payments will also include legislation on micropayment systems and online currencies which are considered as priority areas to avoid national regulatory fragmentation by some market analysts,[11] as well as a major market development opportunity.[12]

[11] See on the subject Analysis Mason, 'The marketplace for and regulation of micropayment services in the UK', Final report for PhoneypayPlus, December 2010.

[12] There would be an untapped estimated EUR 170 billion cash retail purchases market below EUR 20 being made annually in the EU at an average value per transaction of EUR 5 that cannot be served online due to a cost structure of e-payments and m-payments that is incompatible with the values at stake. Virtual currencies have apparently appeared as a market solution to this problem, and particularly developed in the game industry and for mobile applications. But here the main issues lie with money laundering, consumer protection and e-consent. To the extent that these do not create regulatory barriers this is fine. Many, in fact, believe that regulation of virtual currencies will become more critical as usage increases and the option of paying with virtual currency should be consistently taken into account in regulation development. This includes, among others, defining micropayments, clarify interrelations with money laundering legislation, ensure regulatory consistencies, the plethora of virtual currencies available, controls on changing the currency's value.

The 2012 e-commerce Communication[13] has highlighted another possible area of legislative action in the field of parcels delivery, in particular cross-border, drawing on the results of the study on the costs of cross-border postal services.[14] However, the related Green Paper has not been released yet and further steps are unlikely to be communicated before the end of 2012. It is possible that the current policy debate on online trustmarks will also result in some form of legislative action. Cloud computing is another candidate reportedly scheduled for possible legislative action. An action plan on the subject was announced at the end of 2011 but has been delayed to Summer 2012.

Conversely, by sticking to its 2009 Communication[15] stance of promoting .eu domain names for businesses, the Commission has not endorsed so far the requests for taking action to redress the alleged protectionist behaviours that some Member States would adopt as they grant country-bound domain names to businesses. This has been considered a priority barrier to trade requiring legislative harmonisation at the EU level by some stakeholders.[16]

When assessed from the point of view of the single market and of removing barriers to e-commerce, the pending measures can be classified into three main interrelated groups:

1. **Supply side** actions against regulatory cross-border barriers to reduce costs of compliance and administrative burdens for companies active in cross-border e-trade, particularly SMEs. This is for instance the rationale behind (i) the Common European Sales Law, (ii) data protection legislation and (iii) e-government-related technical trade facilitation measures on customs and VAT;
2. **Demand side** measures aimed to build confidence in e-commerce among users by (i) addressing perceived causes of distrust and (ii) simplifying transactions. This was, for instance, the original rationale behind the Directive on e-signature and of the proposed regulation on e-identification and authentication. Similarly, the regulation on ADR/ODR in its present format can broadly be considered as falling into this category;
3. Legislation addressing the problems posed by the fact that **intellectual property rights**, which remain nationally defined in scope, are now incorporated in digital goods which, in theory, should allow to 'trade in intellectual property rights' online at a much lower cost. However current enforcement and right management systems make this exceedingly unpractical and at risk of potential copyright infringement.

It is worth noting that these groups are reported here for purely conventional classification purposes. The emphasis on the different aspects of proposed regulations has actually changed over time. So the revision of the e-signature directive that was long considered mainly as a consumer's confidence-building measure, has increasingly come to be a supply-side measure as it removes cross-border obstacles to access to e-government, simplifies e-invoicing and favours the establishment of trusted services.

[13] Commission Communication, 'A coherent framework for building trust in the Digital Single Market for e-commerce and online services', COM(2011) 942.

[14] FTI Consulting, 'Intra-Community cross-border parcel delivery', December 2011.

[15] Commission Communication On Cross-Border Business to Consumer e-Commerce in the EU, COM(2009) 557.

[16] The case for a European harmonisation of rules on national domain names was made for instance by the Swedish Kommerskollegium – National Board of Trade in its 'Survey of e-commerce barriers within the EU', July 2011.

2. REVIEW OF RELATED PRIORITISATION CRITERIA

The terms of reference for this extended note require to provide a prioritisation of proposed legislative actions based on their likely impact on economic growth, expected timing of first impacts on the economy and room for synergy with other actions, including logical preconditions. As mentioned in the key findings introducing this document, there is no iron law to forecast the impact on GDP growth of the increased size of the Internet economy and therefore no means to accurately prioritise proposed legislative measures accordingly[17]. Instead, a number of **reasonable proxies** can be used for this purpose, in particular: 1) the likely growth in e-market size enabled by the provisions (the so-called opportunity costs of not having the regulation in place) (2) the reduction in compliance costs (typically transaction costs) incurred by the companies already operating in a cross-border market; 3) the possible consumer surplus generated by increased price efficiency. The Commission itself has made recourse to one or a combination of these techniques in its impact assessment reports, although with various degrees of transparency in the underlying assumptions. Whenever quantitative estimates are not available, the likely size of impact can be extrapolated with some caution from other studies or from analyses of consumer or business surveys. However, drawing conclusions based on consumer surveys can be particularly misleading when it comes to assessing the impact of proposed measures on consumers' behaviour.[18] Conversely, as they are generally better aware of market dynamics, businesses should prove more reliable sources, although also exposed to the well known problem of question framing influencing answers.

The **timing of the impact** on the economy will depend on a combination of factors, namely 1) the delay in submitting the proposal; 2) the length of the approval process that can partly depend on the degree of pre-existing consensus on the proposed provisions; 3) the apparent complexity of the ensuing implementing and administrative arrangements; 4) the need for synergic action with other provisions aiming at the same objective; and 5) logical interdependencies, for which only a reflected, yet subjective, assessment is possible from a combination of existing sources in the literature and in the EU policy documents.

2.1. Reducing Costs of Compliance for Companies

Common European Sales Law. Reflection on harmonising the European contract law has been going on for over a decade, but became a particularly pressing issue with the advent of e-commerce. The Single Market Act already envisaged that a European contract law would be among the initiatives needed to reduce regulatory barriers and to effectively open up the internal market. In the Digital Agenda for Europe, the issue was mentioned as a **non-key action** to be considered by 2012, but rose to the rank of **priority measure** in all subsequent Commission policy documents.[19]

One of the obstacles to the digital single market is that the rules of origin envisaged in the e-commerce Directive do not apply to commercial transactions so that any business trading in another Member State becomes exposed to a complex set of legal norms and judicial

[17] In a study on 2010 The Economic Impact of a European Digital Single Market included a ranking of barriers by area and perceived importance but details were not provided what the issues were on how consultants arrived at the related ranking by order of importance and the degree of subjective assessment. http://www.epc.eu/dsm/2/Study_by_Copenhagen.pdf.

[18] For instance, Finns and Danes declare a high degree of distrust in sellers from other countries but their shares of cross-border online purchasers are much higher than the EU average.

[19] In June 2011, in response to the Commission's Green Paper, the Parliament voted with a four-fifths majority in support of optional EU-wide contract rules that would ease cross-border transactions.

systems depending on the applicable law[20] While in B2B transactions the parties have substantial freedom to choose the applicable law if they so wish, in B2C e-commerce there are consumers' rights constraints to contractual freedom. In a number of Commission's surveys, this appeared as **one of the most prominent obstacles to e-commerce** from the point of view of sellers and a major source of compliance costs. Not only does this expose traders to potential liability risks, but it is also a cause of direct operational costs. In fact, when trading online, traders should, first, become familiar with the buyers requirements and possibly adapt the contract to the foreign law; additionally, they could also have to adapt their websites so that they reflect the mandatory requirements that apply in the country of destination.

The problem would be particularly serious for SMEs whose transaction costs for cross-border trade would rise to **26%** of total turnover, as compared to **7%** incurred through domestic transactions, with cumulative transactions costs EU-wide in the region of **EUR 0.4 - 0.8 billion** for B2C transactions and another **EUR 1 - 2 billion for B2B transactions**. Estimates of the costs of implementing the new provisions are in the region of one third of such costs on an on-off basis. No specific estimates are available for e-commerce, but out of analogy with market size these are likely to be at about **EUR 100 - 300 million**.

According to Commission estimates, traders who are dissuaded from cross-border transactions of all types – be they B2B or B2C, online or not - due to contract law obstacles would forgo at least **EUR 26 billion - 184 billion**[21] in intra-EU trade every year. The SME panel survey indicated that **15 %** of SMEs had applied sales restrictions in relation to consumers from other Member States and above **10%** had to refuse orders specifically due to differences in consumer protection rules in the contract laws of other Member States. The specific impact of the proposed reform on e-commerce is more difficult to assess, because of possible different impacts on the B2B and B2C segments. If the total weight of total e-commerce is extrapolated to EU-intra trade, foregone e-trade should be in the region of some **EUR 2.5 billion - 18 billion.** The share specifically attributable to B2C is much more difficult to estimate because the size of the total market is smaller but the problem is more acutely felt there because of consumers' rights restrictions to contractual freedom (that are at any rate apparently ignored by some 77% of businesses). It can be conservatively estimated anywhere between **EUR 1 and 8 billion.**

Calculating the specific impact of the reform requires further assumptions. The figures above reflect the ideal scenario that when all obstacles are removed, all discouraged businesses will enter the market. Actually those holding a sceptical view of the initiative's impact maintain that fragmentation of national rules and high cross-border transaction costs will persist, among others, due to remaining national rules on warranties and unfair terms or unintended market reactions. However, if it is estimated that at least half of the discouraged businesses will enter into cross-border operations as a direct consequence of the regulation,[22] the size of market so unleashed could amount to approximately **EUR 1 billion - EUR 9 billion**. This is approximately compatible with the 45% share of business declaring that their cross-border business would increase if the same legal provisions would apply across the EU.

[20] The situation is radically different in the US where, despite 50 different contract laws, clear rules of origin apply, together with the Uniform Commercial Code.

[21] Eurobarometer 320, European contract law in business-to-business transactions, pp. 24 and 25.

[22] Actually the majority of European businesses surveyed expressed a preference for a uniform European contract law, including an optional instrument.

In terms of supporting economic growth, this reform is clearly **second best** as compared to applying simple rules of origin, but as the Commission recognises there are political limits as to how far the 'full harmonisation' approach can be taken in the field of e-commerce**.** The European Common Sales Law remains an **optional instrument**[23] that will exist alongside the existing national rules of the Member States regarding contractual law and thereby this decreases the risks of uniformity costs[24]. It will result in a notable simplification because by choosing the Common European Sales Law, the trader would have to consider only one set of rules – those of the Common European Sales Law. It would no longer be necessary to consider other national mandatory provisions as it would normally happen in the absence of the Common Sales Law, when concluding a contract with a consumer from another Member State[25]. It is possible that consumers in those Member States most distrustful of trading with other EU countries will use the contract law offered (the consumer's national law or the Common European Sales Law) as a **further signal of the trader's nationality**; choosing the CESL would be a clear indication of the buyer's foreign location, with respect to the seller, thereby compounding the nationality-based discrimination possibilities that traditional domain names already lend themselves to. This could further substantially reduce the impact of the reform on the demand side. On a more speculative note, critics of the reform say that the regulation does not provide any real incentive to consumers for opting for the alternative European scheme[26], and - if limited to cross-border transactions only - would cause exceedingly high information costs to traders and consumers alike to become widely applied in practice[27].

It is evident that approval of this measure will work in synergy with the recently released Commission guidelines on **art. 20 of the Services Directive** on discrimination of service provision based on nationality of recipients and could represent one of the related criteria to assess criteria behaviours on a case by case basis. Moreover, the proposed regulation appears as a kind of supporting condition for any action to encourage **trustmarks and cross-border price comparison sites**, although warranties in this case are bound to remain a sensitive issue. Some likely delays in implementation can be anticipated. The reform will be immediately operational but expected impacts could take some time to materialise due to adaptation and information costs. Implementation will require a number of parallel supporting measures and substantial awareness raising, communication and training efforts, part of which could be made synergic with the proposed **EU Code of Online Rights**. In order to speed up uptake, the Commission has already proposed the establishment of a publicly accessible database of European and national judicial decisions which have a bearing on the interpretation of the provisions of this instrument. Member

[23] Some commentators maintain that the legal validity of the CESL instrument is questionable under the Treaties, or at any rate controversial, which could further discourage adoption. G Low, *Unitas via Diversitas: Can the Common European Sales Law Harmonize Through Diversity?* Maastricht European Private Law Institute. January 24, 2012. See http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1991070; Vogenauer, S. and Weatherill, S., 'The European Community's Competence to Pursue the Harmonisation of Contract Law - an Empirical Contribution to the Debate' in Vogenauer, S. and Weatherill, S. (eds), *The Harmonisation of European Contract Law: Implications for European Private Laws, Business and Legal Practice* (Hart Publishing 2006).

[24] For a definition of uniformity costs see M.W. Carroll: One for All: the Problem of Uniformity Costs in Intellectual Property Rights, American University Law Review, 2006.

[25] It would be sellers who would in practice take the initiative in opting to use the Common European Sales Law. Buyers would then have to give explicit consent before this type of contract could be used. In B2C transactions, traders are also given the option of choosing the law of a Member State other than the consumer's. Such a choice under the conditions of the Rome I Regulation cannot deprive the consumer of the protection of the mandatory provisions of the law of his habitual residence. When the parties choose to trade following the Common European Sales Law, the above provisions no longer apply.

[26] Posner, E., 'The Questionable Basis of the Common European Sales Law: The Role of an Optional Instrument in Jurisdictional Competition', April 6, 2012.

[27] Moreover, since the Common European Sales Law would apply to B2C and B2B transactions alike when an SME is involved, to countervail potential abuse of market power, there is the possibility this would result in confusion in B2B transactions and a further source of transaction costs. See Posner above.

States will be asked to notify such judgments to the Commission without delay. 'European model contract terms' will have to be prepared on sectoral basis. The Commission will also organise training sessions for legal practitioners who use the Common European Sales Law.

Data Protection. Review of the Directive on data protection was the key single market measure envisaged in the Digital Agenda for Europe as far as **building consumer confidence** was concerned; in this framework, the Commission proposed to take immediate action by the end of 2010. The related proposal was eventually submitted by the Commission in January this year and is no longer considered a priority. The rationale behind European intervention in this area stems from the same considerations on compliance costs as above. Businesses would suffer from fragmentation costs due to **erratic implementation** (e.g. difference in the notification requirements or the provision of information to data subjects) of the 1995 Directive at MS level. In terms of enforcement, MS authorities have reacted very differently to the same business behaviours in spite of the working party cooperation mechanism envisaged in art. 29; this fragmented response has arguably contributed to business uncertainty. Generic **consumer concerns** about privacy and protection of personal data have been reported as one of the obstacles to the uptake of the e-economy across Europe. Specific consent on personal data processing on the Internet, the introduction of a 'right to be forgotten', and clear provisions to ensure data portability, are among the main breakthroughs of the proposed reform.

The Commission has not tried to make a quantifiable estimate of the possible market enabling impact of this reform. There are **very limited data** to make an assessment of the number of **companies actually discouraged** from entering the cross-border e-commerce market specifically because of fragmentation of data protection regulation. It is actually more likely that many of them, especially SMEs, are operating in another MS without being aware of or fully complying with related data protection requirements. Based solely on how the issue is dealt with in the dedicated literature, one finds out that (i) data protection only anecdotally makes the object of serious argumentation in the framework of the wider topic of e-commerce barriers, and (ii) the impact of the reform in removing operational constraints on business would likely be limited and lower than that of other possible business-friendly reforms such as that of the money laundering directive, eventually not included in the Digital Agenda for Europe.

The possible impact of the reform on **consumer propensity to buy online** has been variously calculated, in ways at times **bordering speculation**. While privacy issues have increasingly become a perceived cause of concern among Internet users, the possible reassuring effect of the regulation should be assessed in the light of the fact that two Europeans out of three ignore the sheer existence of national data protection authorities, and that 67% of Internet users (as compared to 58% among the total population and 71% of online shoppers and users of social networking and sharing websites) already believe that there is no alternative to disclosing personal information to purchase goods or services online. There is little evidence that data protection concerns specifically relate to cross-border transactions as against a more general attitude towards online shopping. The Commission has provided a detailed analysis of the compliance cost savings due to procedural harmonisation for all businesses (**EUR 4.3 billion** of which only a share attributable to e-commerce), and of the costs involved by the new administrative procedures (i.e. introducing data protection officers and data protection impact assessment procedures); according to this analysis, the result would be a total **net gain**.

However, according to some[28] the order of magnitude of the possible costs of accommodating existing platforms with new data portability and consent requirements does not appear to have been analysed in full detail.[29]

The reform of data protection legislation has a potential for strong synergies with possible future reforms of the **payment system**. In particular, proposed data portability provisions can be extremely relevant to financial and payment service providers and with an impact on their business model. Potential synergies with any policy action on **trustmarks** are also evident. To magnify impact on consumers, this reform will have to be massively communicated and possibly integrated in the proposed European Consumers Agenda and in the EU Code of Online Rights. The proposal **cannot be considered immediately fully operational**, but also includes a number of delegated and implementing acts from the Commission that could delay its concrete functioning. For instance, at the institutional level, it envisages the transformation of the Art. 29 Data Protection Working Party in the European Data Protection Board, which will require the establishment of dedicated working procedures. Moreover, there are a number of parallel mechanisms that will require some time to materialise and without which businesses will remain in a state of uncertainty, notably the drawing up of codes of conduct detailing the proper application of the regulation, the establishment of data protection certification mechanisms and of seals and marks.

2.2. Building Confidence in e-Commerce and Simplifying Transactions

E-signature and e-identification. Since 2010[30] legislation on the mutual recognition of electronic identification and authentication across the EU and a review of the Directive on Electronic Signatures has **consistently remained a priority** of Commission policy action. It was the digital single market priority of the Single Market Act, a key action in the Digital Agenda for Europe and was reiterated as a proposal to be fast-tracked in the recent roadmap. Proposed legislation has a twofold rationale.[31]

It can be first justified by the need to remove the technical barriers to trade that the previous Directive on e-signature had inadvertently created[32] and that are now particularly notable in the e-procurement sector and in access to e-government for the service industry. Additionally, there would be a demand for national eID services as a way to

[28] Wubben M, Schermer B.W., Teterissa D., Legal Aspects of the Digital Single Market – Current framework, barriers and developments. Report for the Dutch Ministry of Economic Affairs, January 2012.

[29] It is therefore difficult to conclude at this stage whether the cost implications for data controllers are truly justified by the proposed simplified administrative framework. It is unclear the extent to which these additional costs, together with the risk of increased fines and the newly introduced statutory liability for data processors will be passed down to consumers in the form of increased prices.

[30] The matter, for instance, was not included in the 2009 Communication.

[31] The genesis of the Directive on e-signature also had this double nature. On the one hand, it was intended to harmonise MS regulations on e-signature that were appearing at that time and remove related administrative barriers; on the other hand, it was also - at least according to some of its proponents - to provide an overall framework for e-commerce which eventually failed to materialise. The main incentive provided was limited to the extent that there are few handwritten signature requirements that would actually apply to e-commerce. Neither advanced electronic signatures nor qualified signatures have gained any significant market acceptance with regard to the bulk of commercial transactions, although the use of e-signatures continued to grow mainly in response to specific public sector mandates. Actually, e-government and e-banking have been by far the main application areas so far.

[32] The Directive has also scarcely contributed to break down the national market barriers it was originally aimed for. Member States and sometimes local governments or even public enterprises have continued to actively promote the adoption of their preferred technologies thereby fragmenting the market in a number of poorly interoperable solutions. The latter represent technical barriers both for the implementation of the e-service directive and for cross-border participation to e-procurement opportunities. Moreover, these solutions are now embedded in legacy systems with considerable sunk costs.

remedy the **alleged market failure of consortia-led standardisation in the private industry.** Indeed, the lack of a reliable authentication and identity management system on the Internet has so far resulted in constraints to wider public acceptance of e-commerce. Similar attempts at providing reassuring frameworks failed in past with legislation on e-signature. This has not been a European phenomenon only: the world over, regulators that enacted laws promoting the use of digital signatures have found that private parties have continued to resist adopting them for commercial transactions.[33] The prevailing standard in retail e-commerce is still represented by a combination of a relatively simple technological fix such as the SSL internet protocol, very basic identification systems based on user-id and passwords, and verification services provided by the banking system.

As far as the confidence-building aspects are concerned, the appropriateness of legislative intervention in the field of e-signature has been deemed **controversial** on several grounds:

• **technically**, because procedures were not easy to correctly design and existing standards were insufficient. Regulators tried to anticipate the market by betting on likely technological developments, but these did not materialise as expected;

• **economically**, because of a misunderstanding of the role played by creditworthiness and liability[34] in allowing a transaction, which is traditionally covered by the banking industry;

• **legally**, because of a mistaken emphasis on the formal value of handwritten signatures, as opposed to their electronic equivalents, to confirm a transaction. This bias is particularly strong in certain legal cultures (e.g. Germany).

Two are the possible expected impacts of this regulation. The first is certain and is based on **existing needs** for enhanced identification/removal of barriers in the current business models. The second depends on the **actual impact** on securing payments and enabling other business models based on trusted services. In the first case, the adoption of the proposed regulation is likely to have an impact on online services where there is already a demand for such applications. This is the case, for instance, for e-banking and e-insurance in Europe, where there is a demand to replace legal handwritten signatures; the same can be said for other contexts where strong personal identification requirements exist.

The potential is therefore considerable for such types of markets. That said, the demand for secure identification in regulated markets depends, in practice, on whether and how regulation is actually enforced. Examples of variations in enforcement typically include online services such as gambling, but could possibly extend one day to sales of alcohol and wines in certain countries or to online pharmacies.

The first impact has never been quantified, but it can be roughly estimated that public procurement currently accounts for some 17% of European GDP, of which an estimated 5-10% of it is carried out online (0.8% - 1.7% of European GDP). Only around 5% of this - roughly equal to EUR 5-10 billion - takes place on a cross-border basis. If by removing e-ID barriers the share of cross-border transactions could equal that of the private market (20%), there would be room for increasing the cross-border component of the **public procurement** market by some **EUR 15-30 billion**. The price effect alone could therefore generate additional net benefits in the region of the order of around

[33] For a review of the subject see Lamberti H.J. *Securing Electronic Transactions*, Electronic Banking Law and Commerce Report, 2005.

[34] There would be no viable business model for certification service providers, because their potential liability may be too large, and currently market conditions do not allow them to charge a competitive price to cover their potential exposure. It is therefore no accident that the market for e-signatures has developed mainly in e-government and e-banking, because it is the counterparts themselves there that can bear related liability consequences (or, in the case of e-banking, even transfer part of the risk to customers). See on this point: Jacobs, K. *New Applications in IT Standards,* 2010.

EUR 500 million – 1.5 billion, i.e. 1% of the total EUR 100 billion savings expected by a total migration of public procurement on an e-platform. The enabling effect in the other markets is more difficult to estimate. Cross-border banking services are negligible at the retail level, but there is a potential market represented by the 15% of EU citizens who plan to open a foreign bank account, and the 12% who plan to acquire a foreign credit card.[35] The enabling effect in legal gambling would take place in a market with estimated EUR 8.5 billion revenues in 2008 and with annual growth rates of over 40%.

The longer-term strategic effects of securing overall transactions are not quantifiable and at any rate much **more controversial and uncertain**.[36] The potential synergies between eID and commercial applications have long been known to proponents of these technologies,[37] and the subject of a dedicated Commission feasibility study.[38] Other Governments are also heavily investing in the idea.[39] However, in its impact assessment document for this proposed regulation, the Commission, while mentioning retail credit card fraud figures as of the same order of magnitude as the potential benefits of the reform, remains cautious and speaks generically of "significant added value for all those sectors where a higher security level of e-identification is needed", which essentially appears to refer to high-value B2B transactions. Similarly, the recently issued Green Paper on Payment Services hardly mentions the issue of using eID as a means for securing transactions and simply refers to two-factor systems. Potentially, there could be considerable savings on compliance costs if the proposed regulation effectively enabled access to e-government services and unlocked the full potential of e-invoicing. However, a risk exists to inadvertently double-count impact (i.e. to mistakenly consider the very same impact as separately generated by different provisions, thus inflating its actual size). For instance, e-invoicing-related cost savings to the tune of annual EUR 60-65 billion had already been accounted for with the introduction of SEPA.

The size of the potential market for **trusted services** is at present only a matter of guesswork. Similarly, market solutions for identifying rights of access in the field of **cloud computing** are still very fragmented. Arguably, there could be significant synergy between these two policy areas; accordingly, impact may be expected of the forthcoming cloud computing strategy, but has not been explored in the related impact assessment, perhaps cautious of raising expectations about uncertain policy developments.

As the experience with the e-signature directive shows, one of the preconditions for the proposed reform to work is that the related standardisation process works smoothly. So this reform will also depend on the parallel approval of the proposed revision of the legislation on the **European standardisation system** already highlighted as a priority in the Annual Growth Survey roadmap. Short-term impacts of this reform on the single market will also depend on synergic action with:

[35] Deutsche Bank Research. 'EU retail banking - Drivers for the emergence of cross-border business', April 2006.

[36] The Commission's proposal has major elements of innovation in the structure of incentives as compared to the previous Directive; these can provide potential enabling factors for radically new business practices. The proposal introduces – although with a complex language and a number of limitations - sovereign liability on the reliability of these identification schemes, as well as an obligation to make available authentication service to third parties for free.

[37] Oracle, 'Integrating E-ID into Next-Generation Citizen Services', An Oracle White Paper - Updated, October 2008 http://www.oracle.com/us/industries/046097.pdf.

[38] DG MARKT, Study on user identification needs, 2007.

[39] For instance the US Government has recently drafted a National Strategy for Trusted Identities in the Cyberspace. http://www.whitehouse.gov/sites/default/files/rss_viewer/NSTICstrategy_041511.pdf.

a) the approval of the **broader reform of the public procurement** legal framework also foreseen in the 2011 Single Market Act that aims to achieve a full transition to e-procurement in the EU by mid-2016[40] and the related recently issued e-procurement strategy;

b) any **European action on gambling** to guarantee adequate protection of consumers and policing compliance with age requirements, including the proposed action plan on gambling based, among others, on the possible introduction of a European trustmark and other initiatives.[41]

Any major impact on **securing payments** will have to be compatible with the outcome of the actions on improving and accelerating the standardisation and interoperability of payments by card, Internet or mobile phone, and increase the level of security of **payments and data protection** that will be carried out as a follow up of the proposed Green Paper on Card, Internet and Mobile Payments. Proposed actions are also likely to increase the demand for an Internet overall security strategy.[42]

Before becoming fully operational, the proposed reform will need considerable time and a number of delegated acts[43] from the Commission. All these will require substantial preparatory work because of the need to carry out extensive consultations with experts.

Alternative Dispute Resolution and Online Dispute Resolution. Alternative Dispute Resolution (ADR) entered the digital single market agenda already with the 2009 Communication on Cross-Border Business to Consumer e-Commerce that mentioned the need to promote alternative dispute resolution schemes and the cross-border small claims procedure through non-legislative means,[44] but was then given **different priority statuses** according to different promoters and agendas. An initiative on ADR was identified by the Single Market Act (SMA), as one of the twelve levers to boost growth and strengthen consumers' confidence. This action would also have an e-commerce dimension. The exploration of Alternative Dispute Resolution mechanisms had however been included in the Digital Agenda for Europe as a non-key action. But following the SMA, it was then included as one of the 40 strategic initiatives of the Commission Work Programme for 2011 and eventually resulted in two separate proposals for legislation, a Directive on Alternative Dispute Resolution and a Regulation on Online Dispute Resolution. They are still generically included among the Single Market Act priorities, but not explicitly singled out as future proposals to be fast-tracked in the proposed 2012 roadmap.

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[40] Although they do not mandate the use of electronic signatures (e-signatures), the legislative proposals aim to achieve a better balance between providing flexibility to public authorities that wish to use this tool, and ensuring greater cross-border inter-operability of e-signature solutions. If public authorities require the use of an advanced e-signature as defined in Directive 1999/93/EC on e-signatures, they must accept e-signatures supported by a qualified electronic certificate referred to in the Trusted List provided for in Commission Decision 2009/767/EC. The proposal thus leverages the approach developed under the Services Directive.

[41] See the European Parliament Report on online gambling in the Internal Market, (2011/2084(INI)), Committee on the Internal Market and Consumer Protection, Rapporteur: Jürgen Creutzmann, 2011.

[42] As the EU study on user identification needs put it: "the vicious circle is that the more one imposes identification by means of true ID the more it will become necessary for hackers to steal identities". See Siemens *et al.*, 'EU Study on user identification methods in card payments, e-payments and mobile payments', Work Package 5: Recommendations, November 2007.

[43] Particularly with regards to interoperability of electronic identification; security measures required to trust service providers; recognised independent bodies responsible for auditing the service providers; trusted lists; requirements related to the security levels of electronic signatures; requirements of qualified certificates for electronic signatures their validation and their preservation; the bodies responsible for the certification of qualified electronic signature creation devices; and the requirements related to the security levels of electronic seals and to qualified certificates for electronic seals; the interoperability between delivery services.

[44] These included the publication of a citizens' guide to the small claims procedure, the creation of an EU e-justice portal and further efforts to promote the ECC-Net.

The **economic rationale** behind legislative intervention is **largely based on remedying a perceived market failure** because, by means of a Regulation, it is requested to put in place private dispute settlement mechanisms at the business expense, as an alternative to the ordinary judicial means. This is tantamount to taxing businesses for the mandatory provision of a service they would be keen to provide on their own, but that they are deemed unable to supply because of sub-optimal coordination. This is even more so in an area where there already is some evidence of a previous possible Government failure.[45] However, if the market failure is taken as a given, the proposed regulation is to decrease consumers' distrust in cross-border e-commerce, while possibly reducing business transaction costs. This is because the proposed establishment of an online dispute resolution platform is to greatly simplify access to such services.

The Commission's indirect assessment of potential impact on growth appears controversial, and at any rate inevitably based on very strong assumptions. The line of reasoning is that more widespread recourse to cross-border e-commerce would allow overall efficiency gains in prices of 2.37%.[46] In the estimated total EUR 171 billion European e-commerce market, there would therefore be room for net benefits worth some **EUR 4-5 billion**. Since some 59% of survey respondents in a seminal study on cross-border trade[47] (see Annex 3) were discouraged from cross-border e-commerce by lack of certainty about the dispute resolution mechanism, the total expected impact could be estimated in the region of some **EUR 2.5 billion,** i.e. **0.02% of GDP**. There is an inevitable degree of approximation in these estimates. First of all, 59% is a figure extrapolated from a multiple answer survey and therefore does not necessarily translate into a one-to-one cause and effect correspondence. To make the point clearer if the Commission had used the same technique for calculating consumer surplus for CESL, one would have got a similar figure and a patent case of double counting. Secondly, it is assumed that all the potential consumers are informed about this possibility, which is a very strong assumption if compared with the 30% of traders who do not even know about the existence of ADR and another 48% who are very poorly informed. Since the Commission has estimated by other means the consumer welfare impact of CESL due to cross-border price efficiency as located between EUR 9 and 36 billion with an average estimate of EUR 18 billion, of which 10% can be considered e-commerce-related, the residual impact of ODR on the figure above would more realistically be in the EUR **0.5-0.7 billion** region.

According to other sources, handling all domestic disputes by means of an ADR rather than by going to court would save businesses costs **from a minimum of EUR 3 billion to a maximum of EUR 13 billion**. However, if such figures are transposed to a cross-border context, the order of magnitude of potential savings appears considerably lower, as the total amount of claims can be estimated in the region of some **EUR 500 million – EUR 1 billion**, some 20% of which presumably Internet-related. If the ODR mechanism were extended to the national level, the e-commerce-related benefits could be in the region of **EUR 700 million – 3 billion**.

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[45] The judicial European small claims procedure should apply in cross-border litigation to civil and commercial matters where the claim does not exceed 2,000 euro, but only less than half of courts in Europe are aware of its existence, not to speak of consumers themselves.

[46] This is the result of the seminal mystery shopping study conducted by Psychonomics on behalf of the European Commission, according to which a European consumer on average could save 2.37% of the total value of a basket of 100 products buying these products on the internet at the cheapest price either domestically or cross-border, compared to buying the same products on the Internet only domestically. See YouGovPsychonomics, 'Mystery shopping evaluation of cross-border e-commerce in the EU', data collected on behalf of the European Commission, 2009.

[47] Flash EB "Business attitudes towards cross-border sales and consumer protection", The Gallup Organisation, 2008 http://ec.europa.eu/public_opinion/flash/fl_224_en.pdf.

The other estimates provided by the Commission actually refer to distributive aspects of the total amount of consumer claims that could be reimbursed; under the current accounting standards, these could even result in short-term GDP losses.

To come to a more precise assessment of the potential impact of the proposed regulation, it should be considered that the most common dispute resolution method used in the cyberspace is the **credit card chargeback**, so the market behaviour is *de facto* regulated by the degree of knowledge about the provisions of the distant payments directive and their actual implementation and by the availability of easy return logistics. Actually, **more than 90% of ADR cases in Europe relate to domestic markets** such as financial services (64%), telecommunications and postal services (22%), and utilities such as energy, water supply and heating (3%). Relevance for cross-border e-commerce would be therefore mainly limited to high-value non-food consumer goods (6%) and, most importantly, travel and tourism (5%).

One of the preconditions for the ADR/ODR reform to be fully successful is the approval of the **European Common Sales Regulation** and the implementation of related support mechanisms. Also in this case, maximising impact on consumers will require a massive communication effort to be possibly integrated in the proposed European Consumers Agenda and in the EU Code of Online Rights. At any rate, the single EU-wide platform is **extremely unlikely to become operational before 2015** as its functioning requires the setting up and upgrading of out-of-court mechanisms. Moreover, the Commission will have to take a number of measures to ensure the security of information, appropriate data access control, a security plan and a security incident management system.

2.3. Easing Trade of Intellectual Rights on the Internet

Collective Rights Management. Despite previous attempts at regulating the matter by means of a combination of recommendations and competition jurisprudence, action aimed at **simplifying the pan-European licensing for online works** has consistently been considered a priority since the Digital Agenda for Europe was first released, sometimes together with the issue of copyright levies[48] This priority has recently materialised as the Commission presented a proposal for a Directive on the collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market.[49]

In Europe, the value of the EU recorded music market is around EUR 6 billion (representing around a fifth of the total world music market), book publishers in the EU have annual sales revenues in the region of EUR 20-25 billion, and the audiovisual industry was worth an estimated EUR 95-100 billion in 2008. The size of the related digital market is highly variable and can range in the case of music from 3% to 33% of the total depending on the MS with an average of some 20%. The clearance of copyrights in the online environment in Europe remains fraught with **high compliance costs** and **substantial legal uncertainty** including the unclear overlapping between the "making available right" originally introduced expressly for the online environment by the Copyright Directive, and the legacy of previous reproduction and public performance rights.

[48] Copyright levies, for instance, are worth an estimated EUR 6 billion across Europe and are a recognised source of e-commerce barriers due to legal uncertainties and costs of compliance for companies trading cross-border. The introduction of a simplified one-stop-shop solution has often been proposed as a measure to promote the digital single market in connection with the reform of collective rights management.

[49] Proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market, COM(2012) 372/2.

This has given rise to very different management practices and contractual and ownership patterns across Europe. Moreover, this would compound with the alleged **management inefficiencies** of collecting societies.

There are a number of problems that intellectual property rights regulated nationally according to the traditional management models can pose in the online environment. These range from very visible issues, such as online music providers being unable to legally trade their services in certain Member States, to obstacles in the digitalisation of movies and other collective works, to subtler barriers such as the impossibility for e-commerce operators to legally utilise certain works of art for the promotion of their websites (e.g. music for virtual showrooms, etc.), thereby selectively limiting accessibility. The rationale behind the Commission's intervention has been long debated because of the coexistence of different aspects: **single market issues**, **preservation of cultural diversity** and **the public role entrusted to collecting rights societies in certain MS**. Moreover any reform would have inevitable **redistributive effects** in the market and could therefore appear controversial in certain respects. The following considerations will therefore apply to single market aspects only, that however represent only one part of the problem.

The Commission has not quantified the impact of its proposal in terms of opportunity costs, cost savings or consumer surpluses. To provide an idea about the possible order of magnitude of the figures at stake, let it suffice to say that according to a recently published study **the potential for the European digital music market** only is currently estimated in the region of some EUR 5 billion, as against slightly more than EUR 3.3 billion in the US, corresponding to potential royalties of some EUR 400 million.[50] However, the actual European market is currently estimated at 40% of the level of development of the US one, and royalties lost can be estimated in the region of yearly EUR 150-200 million. The cost of licensing online streaming – which is particularly complex in most continental Member States – can reach as high as 85% more than the comparable figure in the US. Thus, any reform improving this situation has the potential to increase the online service market by an estimated annual maximum **EUR 4 to EUR 5 billion** in the music market only, and to reduce transaction costs for companies by about **EUR 5 to EUR 10 million** with a potential for artist royalties' increase by some **EUR 150 million.**

Reform of collective rights management appears as a **standalone reform** and is not to benefit particularly from synergic action with any other proposed legislative reform; rather, it might benefit from all measures aimed at fighting piracy online and copyright infringement in the digital environment and from the implementation of the European Strategy for Intellectual Property Rights. Since this is a directive possible delays in the achievement of expected impacts will substantially depend on transposition by Member States and related administrative arrangements.

Orphan Works. This initiative builds on the Commission's 2006 Recommendation on the digitisation and online accessibility of cultural content and digital preservation. Despite the Recommendation, only a handful of Member States have implemented orphan works legislation and the few that did, actually built market barriers by limiting access to resident citizens. European Legislation on orphan works was proposed as a key action in the Digital Agenda for Europe; subsequently, in 2009 the Commission adopted the follow-up Communication on Copyright in the Knowledge Economy and issued a green paper and an impact assessment on the subject. This priority status was never reiterated in subsequent documents, but a proposal was eventually submitted in 2011. The rationale of these measures is to come to a **harmonisation and cross-border recognition** of the status of orphan works for digitalisation purposes by defining common standards of diligence and

[50] Roya, G. and Oxrst, G. B., 'Counting the Costs of Collective Rights Management of Music Copyright in Europe', MPRA, Muenchen, October 2011 http://mpra.ub.uni-uenchen.de/34646/1/MPRA_paper_34646.pdf.

simplifying the clearing of related rights. Main reservations on the EU initiative focused on practical issues such as potential misuse of the instrument or the level of diligence required. In other words, objections to the initiative were more of an operational rather than of a principled nature. The scope of the EU Directive covering written works, cinematographic, audiovisual and audio works is narrower than most parallel national level legislation on the subject.

An estimate of the economic impact on growth of the Directive was never attempted in the related Commission impact assessment report which limits itself to qualitative considerations on the internal market.[51] In the UK, the impact of a proposed orphan works reform – which is broader in scope than the European one - was estimated at EUR 180 million worth of benefits[52] on an annual basis, of which some two thirds due to business creation. If conservatively extrapolated on a European dimension, this could translate into a **EUR 2 billion** potential for enabled market on a yearly basis. However, variations in the estimates of the number of works that would fall into the category of orphan works are so wide on a country basis that the figure above could be located in the **EUR 1 – EUR 5 billion** range. Estimated cost savings for libraries are estimated in the region of **EUR 1.5 - EUR 1.6 billion**.[53]

That on orphan works appears as a **standalone reform** with limited synergies with other proposed legislation, except for the re-use of public sector information detailed below. Effects will become operational **relatively soon, already at the time of transposition** of the Directive and when MS have accomplished a number of implementation measures, including the definition of the sources for a diligent search and procedures needed to ensure that a rightholder in a work considered to be orphan has, at any time, the possibility of putting an end to the orphan status.

Re-use of Public Sector Information. The 2003 Directive on the re-use of public sector information set out the general legislative framework at European level by providing for a **minimum degree of harmonisation of MS practices** in this field. Since then, the 2009 review of the Directive indicated that, in spite of progress starting in 2003, barriers to the cross-border use of public sector information still existed. The issue of the revision of the Directive was included as a key action in the Digital Agenda for Europe. Some of these barriers can be tackled within the existing legislation, while others cannot. The rationale behind European intervention appears therefore quite straightforward from the single market point of view. Controversial issues can arise on other aspects such as concerns about losing control on data, privacy protection, national security and the need to protect the intellectual property rights of third parties. Other reservations have been made sometimes on costs, taxpayers' reward, or other non-economic grounds.[54]

[51] It is stated that "national rules would only allow the online access within the national territory. This would have detrimental repercussions on […] the creation of an integrated 'knowledge economy'". See Commission Staff Working Paper – Impact Assessment on the Cross-Border Online Access to Orphan Works Accompanying the document proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works, May 2011.

[52] UK Government Orphan Works – Impact Assessment 2011, see http://www.ipo.gov.uk/consult-ia-bis1063.pdf.

[53] The total number of books and bound periodicals (volumes) in the libraries of the EU-25 would be 2.5 billion. Making available 2.5 billion books/periodicals would equate to an annual cost to the libraries of EUR 32.5 billion. Taking a conservative estimate that 5% of all books and journals are orphan works, this would translate into EUR 1,625 billion of licensing cost per annum that are attributable to the display of orphan works alone in the EU.

[54] Some examples at http://www.dr0i.de/lib/2011/07/04/a_sample_of_data_hugging_excuses.html.

In this case, the Commission has also provided figures about the expected impact: according to commissioned research[55] the total EU market for public sector information in 2008 would stand at EUR 28 billion. The removal of existing barriers to the circulation of public sector information would optimistically have the potential to more than double the market and release a further **EUR 40 billion** which would bring total direct and indirect economic gains from PSI application and use across the whole EU27 economy. The consequent annual economic gain would be in the order of EUR 140 billion, i.e. broadly of the same order of magnitude as the whole retail e-commerce sector.

Needless to say, this would be the single largest short-term economic impact among the whole package of digital single market measures envisaged in the Digital Agenda for Europe and other accompanying documents so far released, with a potential for European GDP growth in the region of **0.4-0.5%**.

The entry into force of the Directive will depend on MS transposal which is expected within 18 months of approval. Legislation on the re-use of public sector data, whether for commercial or non-commercial purposes, is to act in synergy with parallel **European data protection legislation**. Actually, the objectives of fostering open government data and protecting personal data are to reinforce each other. Moreover, to the extent public libraries are included in the scope of the proposed regulation this is to operate in synergy with legislation on **orphan works**. However, proposed legislation has an enabling nature and **before impact can concretely materialise a number of other barriers have to be tackled**. These include, among others, **common standards** for cross-border data transfer and substantial communication and awareness raising efforts at the national level. The Commission is also expected to provide guidance, particularly on **charging and calculation of costs**, on **recommended licensing conditions** and on formats, after consulting interested parties. So even if approved immediately, it remains to be wondered whether that the first impacts of the Directive can be perceived by 2015.

2.4. Other Commission Initiatives in the Pipeline

Payments. Since 2009 the generic issue of the measures to promote the development of a single space for payment cards and other innovative forms of payment has been raised several times in the various Commission policy documents. It first concretely materialised in the Digital Agenda action of fixing a date for the **migration of all payment systems to SEPA**, which was finally achieved with the approval of the March 2012 regulation on SEPA migration. Finally, in January 2012 the Commission has tabled a green paper on card, internet and mobile payments that will eventually lead to an action plan with concrete measures and legislative proposals that is expected to be submitted by the Commission late in 2012, or early in 2013; these are considered a priority action in the 2012 roadmap.

Payments have been identified as one of the main barriers to the uptake of e-commerce because of three main reasons: 1) **the diversity of payment methods across Member States**, which was to be addressed by SEPA and represented the typical market barrier; and two alleged market failures, namely 2) **the excessive cost of payments for consumers and merchants**, especially for low-value payments (micro payments) and 3) **payment security**. As to the first point, the Commission is considering action, including possible regulation, on several aspects of the legal framework for e-payments that could also represent instances of abuse of dominant position.[56] Measures aimed at reducing cost

[55] Vickery, G., 'Review of recent studies on PSI re-use and related market developments', August 2011.

[56] These include matters traditionally considered from a competition point of view such as: a) multilateral inter-charge fees; b) co-badging; c) separating card schemes and card payment processing; d) reform of existing EU regulation on access to settlement systems that is currently limited to banks and investment firms; and better definition of emerging e-commerce rights to enable or limit possible business models such as e) ensuring

of payments that are based on alleged market failures focus on increased transparency at all levels[57] and a number of possible actions on standardisation[58]. Finally, in the field of payments security, a number of possible measures are being considered ranging from regulation preventing PSPs from providing services to illegal websites to means of introducing an e-authentication requirement as a way to comply with data protection legislation and the use of electronic communication networks. Finally the green paper ends with possible actions on strengthening the Governance of SEPA in the light of the past delays in policy implementation. Since no action has been actually proposed yet, it is difficult to estimate any specific impact on growth. It can be noted that the strong emphasis on securing online transactions and streamlining e-payments does not address the totality of payment barriers to the development of e-commerce[59] and cannot be fully equated with related perceived difficulties.

In alignment with these concerns, the green paper on card, internet and mobile payments has already put forward a number of issues that will have to be addressed more concretely. In particular, mobile payments should ease the transition to payment systems that are secure and have the potential to exponentially increase cross-border trade in goods and services. Indeed, the volume of payments made through mobile devices is increasing dramatically. However, the unrealised potential is still considerable. Much like with e-payments, the full realization of an m-payment market is conditional on meeting the challenges of standard fragmentation and cybersecurity. Accordingly, it is hoped for a comprehensive European framework that can cater to the needs of m-market participants, and specifically to their needs for common technical standards, security, interoperability and competitive transaction fees, although the interests at stake and the redistributive aspects between the concerned industries represent a very tough challenge.

Future EU action in the field of payments is likely to have a strong **standardisation component** that will presuppose that the proposed revision of the legislation on the European standardisation system (ICTs and services) is enacted. Action in the field of payment security could possibly be in synergy with the approval of the Revision of the e-signature directive and the newly proposed legislation on e-identification and e-authentication. It will also benefit from the overall strategy on Internet security in Europe and the establishment of the European Cybercrime Centre by 2013, although interrelation

implementation of the SECA cards framework and related technical requirements; and the definition of clearer rules on f) the provision of information on the availability of funds; and g) the circumstances under which card payment schemes can unilaterally refuse acceptance of a contract with an e-commerce operator.

[57] Transparency issues concern, first and foremost, consumer-merchant relations (together with rebates and surcharging), and merchant-PSP relations (including non-discriminatory and honour all cards rules and blending practices).

[58] This however is relatively less of a problem for e-commerce as such than for mobile-commerce – including the promotion of common standards and in the field of technical interoperability. For instance, for the time being, the European Payment Council ruling SEPA has decided against setting up its own online banking scheme, but moves towards the creation of competitive schemes apparently restricted to bank service providers only, which has led to the Commission opening a competition case on interoperability in e-payments. The scalability of such a scheme to a truly European dimension is currently been tested. In the meantime bank operators have been launching their private EU-wide clearing and settlement services on the market, the first of which has appeared on a pilot basis on 4 June.

[59] In the continent as a whole, credit cards are one of the most popular online payment methods with a share of approx. 40%, but their overall share is declining. In Germany, the most popular payment method has remained payment by invoice, while credit card purchases account for only approximately 20%. Access to data from credit enquiry agencies remain a notable constraint especially for SMEs to operate in the German market. In some New Member States cash-based e-commerce through walk-in locations retains a significant share of the market. Finally, the way the money laundering legislation is implemented can also cause considerable barriers to cross-border trades when cross-border payments require very stringent ID identification requirements.

with internet security and related liability provisions are quite complex.[60] It is unclear how some possible provisions will coordinate with EU action on trustmarks.

Parcel Delivery. The issue of parcel delivery has been a relatively **recent entry in the e-commerce agenda**. In its 2009 Communication, the Commission proved confident that, with full market opening,[61] an internal market would be established and postal operators should be able to substantially improve cross-border logistics. So the issue remained outside the agenda until a 2011 study specifically focusing on the parcel delivery market highlighted a number of problem areas: substantial disparities in the price of these services between small senders and large senders, widespread concerns about the quality of service (delivery times, possible damage sustained in the course of delivery) and a general lack of information on available alternatives for delivery. In the Mystery Shopping study delivery to certain countries was possible in some 30% of the offers, but was restricted to less than 15% of cases in more than half of the EU MS. Since a substantial number of consumers[62] said they were not interested in making cross-border transactions because of concerns with delivery, the Commission is to release a green paper and hold the related public consultation with a view to take possible further measures. The contents of this Green Paper are still unknown.

A number of policy problems have been highlighted, some of which potentially deserving regulatory action. In particular these are:

1) The market barriers represented by imperfect reverse logistics, where SMEs have difficulties in arranging local return addresses to their customers, as multinationals do to attract clients. Compared to large operators, SMEs are at a disadvantage;
2) General cost factors, such as the lack of a single efficient logistical transport system across the EU, the lack of an intermodal pan-EU track and trace system, and the lack of a common standard for addresses across Europe;
3) Anticompetitive behaviours and regulatory capture[63] substantiating in a **two-tier delivery market in cross-border parcel delivery**, in which small senders and those residing in peripheral countries or rural areas are paying much higher prices. Domestic regulators allow that, all things being equal, cross-border prices are roughly twice as high as compared to domestic prices. The functioning of the return logistics is one of the factors interacting with both the payment service industry and the demand for alternative dispute resolution services. Therefore, these three aspects should ideally be analysed together.

Trustmarks. There exists a fragmented **market for trustmarks and trustmark providers** – both public and private ones - that inform consumers whether the website complies with a certain set of rules. Data on consumers' reliance on such instruments and

[60] One such example is an ECB Working Paper showing that if regulators fix a maximum level for the interchange fee in the payment service industries, the payment platform can react by adjusting the level of liability that is borne by merchants for fraudulent transactions, which may not be desirable from the point of view of social welfare. See Anna Creti, Marianne Verdier, "Fraud, Investments and Liability Regimes in Payment Platforms", ECB Working Paper Series 1390. October 2011.

[61] This was because Directive 2008/06 set the final stage of liberalisation in 2010 for most Member States (16 that account for 95% of the sector) and 2012 for the others.

[62] A 2011 flash Eurobarometer exercise highlighted that around half of European consumers feel more confident buying online domestically than cross-border. On the demand side, concerns about the quality and security of purchases, as well as high delivery prices are all contributing factors to this perception. When problems with delivery occur, consumers could rely on the European Consumers Centres (ECC), but only around one third of buyers know of this opportunity.

[63] The analysis showed that prices are unlikely to be cost-oriented and cross-border services are routinely used to cross-subsidised domestic ones. Moreover there was considerable confusion as to what cross-border parcel delivery product could be considered as an universal service obligation in the different MS and lack of knowledge among the various national regulatory authorities.

impact on conversion rates are extremely variable and generally provided by operators themselves. The Commission is carrying out a study with a view to assessing the potential for publicly supervised certification schemes with a particular focus on facilitating cross-border transactions. In particular the Commission is bound to encourage the establishment of pan-EU price-comparison websites certified by reliable trustmarks. Such facilities are currently hardly existing because of a combination of a lack of demand and difficulties in comparing attributes and specifications (e.g. safety standards, power cords, adapters, phone connections, etc.) that are customised for usage in a given target market.

Cloud Computing. Cloud computing is a technology with a potential for major cost savings in the provision of e-services, as well as an enabler for the delivery of new ones, including in particular e-government. Also in this case, however, there is a perceived risk that the **fragmentation of the digital single market** along national borders may impinge on the success of this new technology. In fact, differing legal frameworks may restrict or slow down the development of a EU-wide cloud-computing-based services market. Some of the related problems are common to e-commerce at large, where they have already been much felt. Such problems relate in particular to the fact that cloud services depend on the difficult circulation of intellectual property rights in the digital environment. This would hinder the circulation of digital goods such as music, films and e-books. Further problems are more specific to the novelty of this technology and regard an unclear overall contractual legal and liability framework spread across multiple jurisdictions. Liability issues and jurisdictional confusion represent a particular cause of concern according to recent polls, together with possible legal gaps in how data protection, contracts, consumer protection or even criminal law provisions are implemented in the different MS. Finally, as far as harmonisation is concerned, it is little surprise that support for interoperable standards from industry is mixed.

Commission's strategy on the subject - launched in 2011 - is expected to be eventually finalised by summer of 2012. An expert group report[64] drafted as a preparatory study for the Commission, concluded that “legalistic issues” on liability and scalability (including licensing rights and IPR of replicating protected code and/or data) were to be dealt with in the long run within the horizon of a five-year period. Others[65] have conveyed a greater sense of urgency about the risks of market barriers. These may materialize in the form of country-specific laws establishing what data can be shared and stored through cloud computing. Additionally, any future legislative initiative on cloud computing will have to be considered in synergy with other pieces of EU legislation.[66] Finally, the implementation of intra-EU trade facilitation policies could be largely improved by adopting cloud technologies and there could be evident synergies in that removing obstacles to the latter could be an enabling factor for the former (e.g. sharing access to VAT numbers databases). Accordingly, and as mentioned earlier, the review of the eSignature Directive and cross-border recognition of eIDs could work as a key enabler for cloud computing.

[64] L. Schubert, K. Jeffery and, B. Neidecker-Lutz The Future of Cloud Computing – Opportunities for European Cloud Computing beyond 2010.

[65] Civic Consulting, ‘Cloud Computing – Study’, European Parliament. Directorate General for Internal Policies, Policy Department Economic and Scientific Policy, May 2012.

[66] In particular: a) the data protection directive as far as access to stored data is concerned; b) the e-privacy directive; c) the unfair commercial practices directive as concerns behavioural advertising; d) the unfair contract terms directive; e) the e-commerce directive; and f) the data retention directive for law enforcement purposes.

3. CONCLUSIONS AND RECOMMENDATIONS

3.1. Main Findings

Proposals of legislative measures aimed at the Digital Single Market can be ranked in order of (i) foreseeable impact on economic growth and (ii) synergic effects. A ranking by likely economic impact can be given by comparing the order of magnitude of opportunity costs, cost savings and consumer surpluses and the Commission usually provides information on most, if not all, of these aspects in its impact assessment reports. A further assessment can be made of the degree of confidence and accuracy of the estimates above; those based on existing market barriers and business feedback can be considered as intrinsically more reliable than those based on potential markets or consumer surpluses. Examples of these various types of estimates and the confidence level they carry with themselves has been provided throughout this note.

The assessment of synergic effects require more qualitative information on logical chains of action and these are not always reflected in the Commission documents accompanying policy proposals, especially when potential synergies concern policy areas that are still in the pipeline. However, also in this case objective criteria could be found to substantiate such instances with a reasonable degree of approximation.

3.2. Ranking Measures according to their Economic Impact

If a roadmap should be defined by prioritising legislative measures based on the approximate order of magnitude of their expected economic impact, the Commission 2012 proposal would be broadly confirmed and both legislation on the European Common Sales Law and on e-identification and authorisation would appear as large potential market enablers, as far as e-commerce and the removal of related market barriers are concerned. However, it is worth noting that also the Directive on the Re-use of Public Sector Information has a potentially large economic impact, although this would be highly dependent on the condition of enabling innovative online goods and services. Its overall impact on innovation could therefore be considerable, but for the reasons just mentioned its concrete materialisation currently appears rather uncertain. Moreover, information on the potentially enabled markets is much more exhaustive here than in other cases. As far as the digital single market is concerned, it is worth noting that the expected impact of legislative actions can be comparable to that of technical regulations. For instance, the expected economic benefits of all the measures above are broadly of the same order of magnitude as those estimated as forgone due to the delay in the implementation of the new customs code (some EUR 2.5 billion annual operational savings in compliance costs at full regime, and as high as EUR 50 billion in expanded international trade market, according to the original Commission impact assessment). Thus, in net terms the likely impact on the Digital Single Market of the measures above in the period considered is likely to be at least partly offset by the delayed implementation of the modernised customs code, assuming related estimates to be correct. Forthcoming legislation on collective rights management in the digital environment would be caught between the priority legislation above and the other proposed measures. However, if only the B2C market and related barriers is considered, this should be ranked as equal to the Common European Sales Law, if not somewhat higher. All the remaining proposed legislative measures have impacts of comparable size; the margin of error inherent in existing estimates does not provide a sound basis for any ranking by importance based on economic criteria only.

In particular, when judged from the point of view of the digital single market, legislation on ADR/ODR does not immediately appear as a priority, which probably explains the conflicting status it was given in the various Commission agendas. There are data limitations based on available secondary sources only in extending this ranking exercises to other initiatives in the pipeline and the degree of speculation would inevitably be higher. The Table 1 overleaf summarises the results of the assessment above when data are available and public.

3.3. Ranking Measures according to Synergic Effects and Timing of Effects

Proposed legislation on the Common European Sales Law is the only measure with potentially large effects that does not require effective standardisation as a precondition for effectiveness. All actions on e-identification and authentication, re-use of public sector information and in the future e-payments, will require very effective ICT standardisation as a precondition and are unlikely to produce results until the issue of involving ICT consortia in standardisation for public purposes is convincingly solved.

Similarly, the bulk of the possible short-term impact of legislation on e-identification and authentication will require previous approval of proposed legislation on e-procurement and the related action plan in order to materialise concretely, while the possible long-term impact on the payment systems or on cloud computing - however uncertain - is hardly conceivable, unless some kind of standardisation agreement is reached with related industries. Legislation on data protection and re-use of public information are mutually synergic, the former being an enabling condition for the latter; the same is true for any possible future policy initiative on trustmarks and cloud computing. Effective cloud computing, in turn, would eventually appear a facilitating factor for the implementation of other e-government trade facilitation measures.

There are good reasons to analyse the markets for payment services, alternative dispute resolution mechanisms and parcel delivery jointly because they interact with one another[67]; given this complexity it would not be recommendable to look at legislative measures separately, without considering the broader picture of how the market behaves and at its underlying drivers. Moreover, the impact of legislation on ADR/ODR would also benefit from the previous approval of the European Common Sales Law.

Legislation on collective rights management and orphan works appears relatively standalone; the latter could even represent an enabling factor for the effects of the reform on the re-use of public sector information to materialise. In ordinary conditions, the effects of the proposed reform of collective rights management should be the quicker to become visible before 2015, but this is somehow compensated by the delays in submitting the proposal. If everything is taken into consideration, Table 3 below provides the flowchart indicating the prioritisation of roadmap items, giving the combination that most likely will maximise economic impact in the short run. This is compounded by a graph highlighting interdependencies and the likely timing of impact along a timeline (Figure 2).

[67] While responsibilities for e-commerce and postal services have been joined within the same unit at DG MARKT, legislation on ADR/ODR has been separately proposed by DG SANCO.

The flowchart, however, considers only digital single market aspects. If the estimate considered broader impact on the single market, whether online or not, then the order of prioritisation would change and ADR/ODR legislation would probably have a ranking comparable to that on collective rights management. The modernised customs code is a special case where a decision is to be made not on the expected date of approval: such a deadline had already been set but was eventually missed. Rather, the question is now by how much longer approval will still be delayed.

3.4. Recommendations

Analysis shows that the Commission has been broadly correct in its 2012 proposed roadmap for the Digital Single Market if expected economic growth is taken as a judgment criterion; however, strategic priorities have varied over time since the Digital Agenda for Europe has been first proposed based on political or other factors that are not always clear to the external observer. It could therefore be worth proposing that in the future mid-term strategic documents these prioritisation criteria be made more explicit in the text. In addition, these criteria should provide the basis to quantify impact in terms of economic growth. Concomitantly, they should be made more transparent and open to external discussion and scrutiny. This would also subsequently help identify prioritisation changes for reasons other than economic growth. Moreover, if synergies were better highlighted from the beginning of the legislative programme, the rationale behind the strategy and the related chain of implementing actions would become even clearer in the likely timing of the rolling out of related effects. These prioritisation criteria could for instance be included as annexes to the mid-term review of the Digital Agenda for Europe and serve as a reference for subsequent more detailed impact assessment exercises. The major inconvenience of this proposal is that it would require that part of the impact assessment analysis be anticipated and performed at an earlier stage in the policymaking process, which could be uneasy to manage. However, the level of approximation needed for estimates relating, for instance, to cloud computing or e-payment is probably feasible. This would help address one of the major shortcomings of the current impact assessment system, i.e. the difficulties these documents have in describing the economic impact deriving from the synergic action of different provisions and the related risk of double counting.

Incidentally, as a by-product of this, more methodological coordination could be reached between the different Commission services operating in the same policy area. In particular, there should be agreement on how impact assessments exercises should conventionally calculate the size of policy problems and the potential economic impact of the associated policy measures. It would be important to do so in order to avoid the risk of double counting and to come to orders of magnitude that are truly comparable.

In particular, if the EU moves towards a Digital Single Market strategy spearheaded by e-government initiatives, it could be recommendable, for comparative purposes, that a harmonised approach should be adopted as regards the provision of related impact assessment reports and data contents, particularly in the cases of technical regulations with a considerable potential market impact.

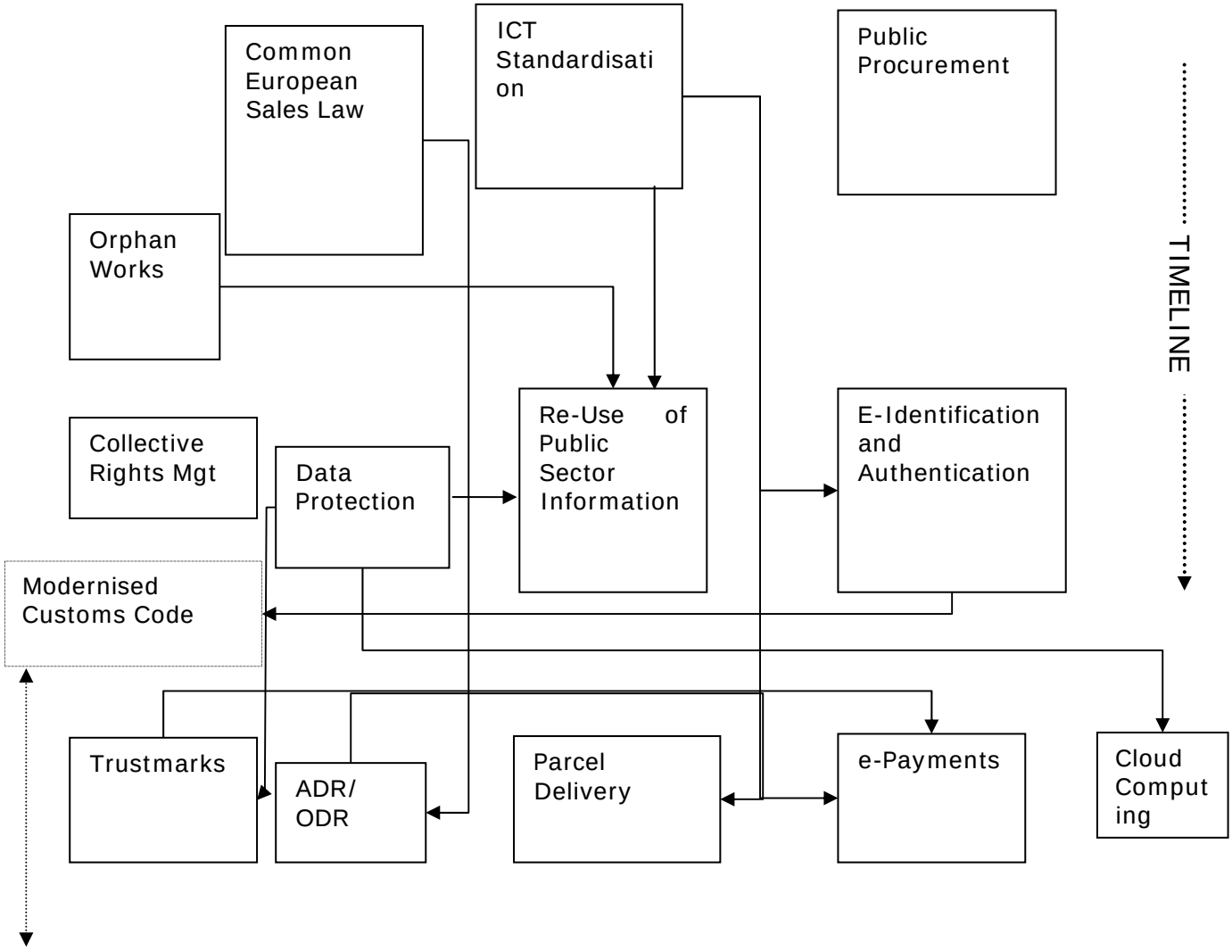
Finally, if synergies were already highlighted in the mid-term strategic document this could represent a useful working tool for the Commission's own programming purposes because the work plan and related timing of the different DGs involved would become clearer. Synergies would also appear in a more straightforward manner, including the need for possible organisational restructuring as was done with e-commerce and postal services to ensure holistic approaches in considering different facets of the same problem and in solving the negative consequences of delays in submitting policy proposals.

Table 3: Prioritisation of the proposed legislative measures based on the identified criteria

Proposal	Size of Enabled Market	Savings in Costs of Compliance	Price Efficiency-related Consumer Surplus	Dependency on Previously Approved Legislation	Synergy With Other Legislation or Soft Law Actions	Complexity of Subsequent Implementation Arrangements
Common European Sales Law	EUR 13-90 billion (EUR 1-9 billion)	EUR 1.5-3billion (EUR 100-300 mln)	< EUR 2.5 billion? EUR 1.8 billion	No	Art.20 Guidelines Trustmarks	Medium
Data Protection	n.a.	EUR 4.3 billion	n.a	No	E-payments Trustmarks Code of Online Rights	High
E-Identification Authentication	>EUR 15-30 billion	n.a.	EUR 0.5–1.5 billion	ICT Standardisation Public Procurement	Action plan on gambling online E-payments	High
ADR/ODR	n.a.	EUR 3 – 13 billion (EUR 100-200 mln)	< EUR 2.5 billion? 0.7 billion?	Common European Sales Law	Code of Online Rights	High
Collective Rights Management	>EUR 4-5 billion	EUR 5-10 mln			Fight against Piracy European Strategy for Intellectual Property Rights	Low
Orphan Works	EUR 1-5 billion	EUR 1.5 billion	n.a.	No	n.a.	Low to Medium
Re-use of Public Sector Information	EUR 40 billion?	n.a.	n.a.	ICT Standardisation	Data Protection Orphan Works	High

Figures referred strictly to e-commerce are in brackets.

Figure 2: Flowchart for roadmap prioritisation highlighting the synergies between the various proposed measures (same as Figure 1)



Legend: the two-way dotted arrow associated with the Modernised Customs Code is testament to the peculiar status of this measure, whose effects are expected to start playing out from the time when this measure will be implemented and do not depend on the timing of approval. In all likelihood the original deadline for adoption (June 2013) will not be respected. The issue at stake now is therefore by how long more adoption of this measure will be delayed.

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ANNEX 1: STATE OF PLAY OF THE VARIOUS DIGITAL MARKET-RELATED ACTIONS PROPOSED IN DIFFERENT EU POLICY DOCUMENTS

State of Play of the Various Actions Proposed by the Commission in the Context of the Digital Agenda for Europe as per (i) the Digital Agenda for Europe and (ii) Commission 2012 Roadmap

Title	Type of Action Envisaged	Status
1) Simplifying pan-European licensing for online works (collective rights management)	Legislation (***)	**Scheduled for 2010 Proposed in 2012**
2) Preserving orphan works and out of print works	Legislation	**Proposed in 2011 Agreement Reached**
3) Review the directive on re-use of public sector information	Legislation	**Proposed in 2011 Approval Pending**
4) Stakeholder debate on further measures to stimulate a European online market	*Commission Report*	
5) Simplifying the distribution of creative content	*Green Paper*	***Released in 2011***
6) Protecting intellectual property rights	*Commission Report*	
7) Fix a date for migration to Single European Payment	**Legislation**	**Approved**
8) Revision of the e-signature Directive	Legislation (***)	**Proposed in 2012 Approval Pending**
9) Updating the e-commerce Directive	*Communication*	***Released in 2012***
10) Member States to implement laws to support the digital single market	*Implementation Assessment*	***Included in the Digital Agenda Scoreboard***
11) Member States to Transpose the VAT Directive	*MS Transposal*	***Deadline set at the beginning of 2013***
12) Review the EU data protection rules	Legislation	**Proposed in 2012 Approval Pending**
13) Complementing the Consumer Rights Directive (Common European Sales Law)	Legislation (***)	**Proposed in 2012 Approval Pending**
14) Explore the possibilities for Alternative Dispute Resolution	Legislation	**Proposed in 2011 Approval Pending**

Title	Type of Action Envisaged	Status
15) Consult the stakeholders on collective redress	*Public consultation*	***Action aborted No follow up***
16) Code of EU Online Rights	*Commission Communication*	***To be released by the end of 2012***
17) Stakeholder platform for EU online rights	*Consultation mechanism*	***To be implemented in 2012***
18) Harmonisation of numbering regimes	*Public consultation*	***Action aborted No follow up***
19) Spectrum Policy Plan	**Decision**	**Approved**
20) Investigate the cost of non-Europe in the telecoms market	*Commission Communication*	***Study accomplished Consultation started***
21) Roaming	**Regulation (***)**	**Approved**

Legend: Actions considered key in the Digital Agenda for Europe are underlined while those highlighted by the Commission in its Annual Growth Survey as priorities are marked by three asterisks (***). Non-legislative measures are in italics.

Source: Consultant's own elaborations.

Other Actions Envisaged in Cross-Border Business to Consumer e-Commerce in the EU - COM(2009) 557 final

Title	Type of Action Envisaged	Status
Proposal for a Consumer Rights Directive to address the fragmentation of consumer protection rules	Legislation	**Proposed in 2008 Adopted in 2011**
Commission to put forward recommendations to increase the efficiency of cross-border enforcement of the consumer acquis	*Recommendations*	**Proposed in 2009**
Commission to publish guidelines to tackle unfair commercial practices	*Guidance*	**Published in 2009 Guidance subject to ongoing review**
"Simplified invoicing" for distance sellers under certain circumstances (provisions included in the VAT Directive)	*MS Transposal*	***Deadline set at the beginning of 2013***
The Commission invites the European Parliament and the Council to give due priority to the harmonisation in national implementation of the rules on waste of electrical and electronic equipment (WEEE Directive)	Legislation	**Proposed in 2008 Approved on second reading in 2012**
Adopt a proposal to reduce the fragmentation of copyright levies	Legislation (***)	**Scheduled for 2010 Under Preparation**
In the context of vertical restraints, contribute to reducing barriers to online sales […] with the aim of identifying the most common practices to be considered as restrictions on passive sales which are likely to infringe the competition rules.	*Guidelines*	**Proposed in 2010**
Secure information for consumers and traders. The Enterprise Europe Network will be used to inform traders of their obligations and opportunities.	*Establishment of designated body*	**Pursued in 2008**
Strengthen market monitoring of cross-border e-commerce to inform stakeholders of relevant market developments.	Reporting	**Ongoing**

Other Priority Actions Envisaged in the Single Market Act – COM(2011) 206 final

Title	Type of Action Envisaged	Status
The Commission will present an Action Plan for the development of electronic commerce	Action Plan	**Proposed in 2012 Council Conclusions**
Propose an optional Common European Sales Law to create a single set of rules for cross-border contracts in all 27 EU countries	Legislation	**Proposed in 2011 Adoption Pending**

Commission Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, ' A coherent framework for building trust in the Digital Single Market for e-commerce and online services', COM(2011) 942

Title	Type of Action Envisaged	Status
Implementation of art. 20 of the Services Directive	*Guidelines*	**Proposed in 2012**
Legislative initiative on private copying	Legislation	**To be proposed in 2013**
Review of the Directive on copyright in the information society together with Collective Rights Management	Legislation	**To be submitted in 2012**
Cross-border parcels delivery	*Green Paper*	***Yet to be released***
Online trustmarks	Legislation?	**To be proposed in 2012**
Cloud computing	Strategy adoption	***Public consultation in 2011***
Micropayment systems and online currencies	*Communication*	***Adopted in 2011***

ANNEX 2: INDIVIDUALS WHO ORDERED GOODS OR SERVICES OVER THE INTERNET IN THE LAST 12 MONTHS

	Individuals who ordered goods or services over the Internet in the last 12 months (source EUROSTAT)											
	A. Total Share of Individuals				B. Of which from other EU MS				Ration B/A			
GEO/TIME	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011
EU (27 countries)	32	37	40	43	6	8	9	10	19%	22%	23%	23%
Euro area	33	36	40	43	7	9	10	11	21%	25%	25%	26%
Belgium	21	36	38	43	9	17	20	24	43%	47%	53%	56%
Bulgaria	3	5	5	7	1	1	2	3	33%	20%	40%	43%
Czech Republic	23	24	27	30	3	2	2	5	13%	8%	7%	17%
Denmark	59	64	68	70	20	24	28	28	34%	38%	41%	40%
Germany	53	56	60	64	7	9	8	9	13%	16%	13%	14%
Estonia	10	17	17	21	3	6	8	10	30%	35%	47%	48%
Ireland	36	37	36	43	17	20	18	22	47%	54%	50%	51%
Greece	9	10	12	18	3	4	4	7	33%	40%	33%	39%
Spain	20	23	24	27	5	7	7	9	25%	30%	29%	33%
France	40	44	54	53	11	12	15	14	28%	27%	28%	26%
Italy	11	12	15	15	3	4	4	5	27%	33%	27%	33%
Cyprus	9	16	18	21	6	12	15	18	67%	75%	83%	86%
Latvia	16	19	17	20	5	7	7	8	31%	37%	41%	40%
Lithuania	6	8	11	16	1	3	3	5	17%	38%	27%	31%
Luxembourg	49	58	60	65	43	51	53	56	88%	88%	88%	86%
Hungary	14	16	18	22	2	2	3	4	14%	13%	17%	18%
Malta	22	34	38	45	17	29	35	38	77%	85%	92%	84%
Netherlands	56	63	67	69	10	12	12	14	18%	19%	18%	20%
Austria	37	41	42	44	24	27	29	32	65%	66%	69%	73%
Poland	18	23	29	30		2	2	2		9%	7%	7%
Portugal	10	13	15	18	4	6	6	7	40%	46%	40%	39%
Romania	4	2	4	6	1	1	1	1	25%	50%	25%	17%
Slovenia	18	24	27	31	6	9	10	11	33%	38%	37%	35%
Slovakia	23	28	33	37	5	8	9	11	22%	29%	27%	30%
Finland	51	54	59	62	15	18	21	28	29%	33%	36%	45%
Sweden	53	63	66	71	9	10	13	16	17%	16%	20%	23%
United Kingdom	57	66	67	71	7	11	10	10	12%	17%	15%	14%

ANNEX 3: PERCEIVED IMPORTANCE OF VARIOUS BARRIERS AMONG RETAILERS WHO ARE TRADING AND WHO ARE NOT TRADING CROSS-BORDER (%, EU27)

Perceived importance of various barriers among retailers who are trading and who are not trading cross-border (%, EU27)

	All	Trading	Not trading
Additional costs of compliance with the different national fiscal regulations (VAT rules, etc.)			
Very important	34	28	37
Fairly important	28	26	29
Fairly unimportant	12	17	11
Not important at all	15	24	12
DK/NA	11	5	11
Extra costs of compliance with the different national laws regulating consumer transactions			
Very important	29	22	33
Fairly important	31	28	33
Fairly unimportant	13	20	10
Not important at all	16	25	12
DK/NA	11	6	12
Extra costs arising from cross-border deliveries			
Very important	28	24	30
Fairly important	29	23	31
Fairly unimportant	14	18	13
Not important at all	18	28	14
DK/NA	11	6	12
Greater difficulty in resolving cross-border complaints and conflicts			
Very important	28	21	31
Fairly important	31	28	33
Fairly unimportant	13	19	11
Not important at all	17	26	13
DK/NA	12	6	12
Higher risk of fraud and non-payments in cross-border sales			
Very important	38	32	42
Fairly important	25	23	26
Fairly unimportant	10	14	8
Not important at all	16	26	13
DK/NA	11	5	12
Greater difficulty in ensuring an efficient after-sales service			
Very important	26	18	29
Fairly important	29	25	31
Fairly unimportant	15	19	13
Not important at all	18	30	14
DK/NA	12	8	13
Costs arising from language differences			
Very important	20	13	23
Fairly important	25	19	27
Fairly unimportant	20	27	18
Not important at all	24	35	20
DK/NA	11	6	12

Source: Flash EB "Business attitudes towards cross-border sales and consumer protection", 2008.

NOTES

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