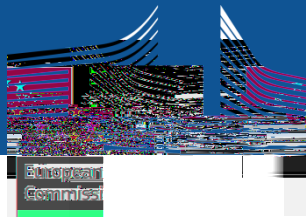




Outline







Objectives Directive on e-commerce 2000/31/EC of 8 June 2000 (ECD)

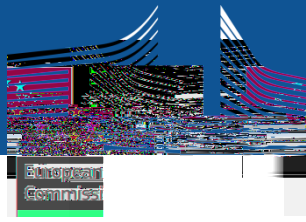
Remove obstacles to cross-border online services in the EU internal market (*free movement of services*)

Provide legal certainty to business and citizens

Offer a flexible, technically neutral and balanced legal framework

Enhancing competitiveness of European service providers

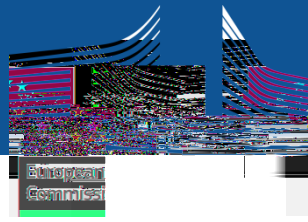




Scope of application

- notion of "information society services"
 - any service normally provided for remuneration
 - at a distance
 - by electronic means
 - at the individual request of a recipient of services
- ECD does not apply to
 - the field taxation
 - data protection
 - gambling activities





Internal market clause (Article 3) – free movement of information society services

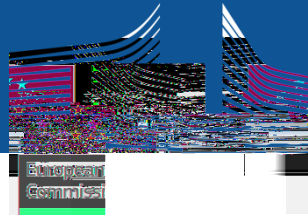
" Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State"

Derogations possible under strict conditions, e.g:

measures necessary for public policy, protection of public health, public security, protection consumers
proportionality test

Article 3 does not apply to intellectual property rights, consumers contracts, freedom of parties to choose the applicable law





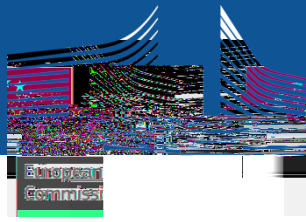
Notification obligation under E-Commerce Directive

Notification of intention to take measures derogating from the internal market clause (see previous slide) to

MS of establishment (1st and 2nd phase) and







Liability of online intermediaries (general points)

ECD harmonises the conditions under which information society service providers cannot be held liable (liability limitations) for a third party illegal content

ECD does not harmonise "liability" but "limitations of liability"

The liability limitations apply to all forms of illegal activities (including copyright and trademark infringements, defamation, misleading advertising etc.)

The liability exemptions apply to both civil and criminal liability





Mere conduit

Service providers, whose role solely consists in the transmission of information originating from third parties and the provision of access through a communication network, cannot be held liable for third party illegal content if they:

- Do not initiate the transmission

- Do not select the receiver of the transmission and

- Do not select or modify the information transmitted

Automatic, intermediate and transient storage of information which takes place during the transmission of the information in order to carry out the transmission, are covered by the exemption of liability.



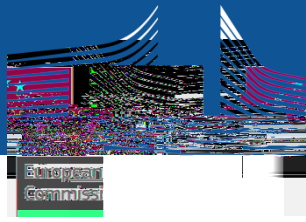




Hosting

Service providers who store information supplied by and at the request of a recipient of the service are not liable if:

They do not have actual knowledge of illegal activity or information and as regards claims for damages and are not aware of the facts or circumstances from which the illegal

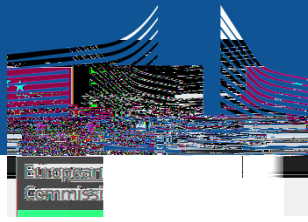


What is a hosting activity?

Court of Justice of the European Union (CJEU) (C-236-238/08 - *Google/LVMH* and C-324/09 *L'Oreal/eBay*):

Intermediary should not have knowledge or control over content - mere technical automatic and passive nature

Passive v active: the role played by the service provider in the drafting of the commercial message which accompanies the advertisement link or in the establishment or selection of keywords is relevant



What constitutes actual knowledge or awareness?

Awareness: awareness of facts or circumstances on the basis of which a diligent economic operator should have identified the illegality in question (CJEU in *C-324/09 - L'Oreal/eBay*)

How can it be obtained?

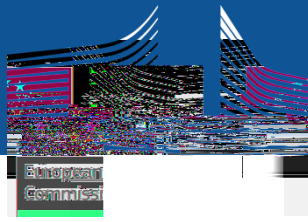
Through an investigation undertaken on an intermediary's own initiative

Through a notification, if it is sufficiently precise and adequately substantiated

Through an active role; optimising the presentation of the offers for sale or promoting them

...





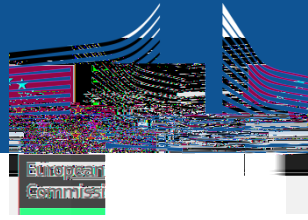
Prohibition of a general monitoring obligation (Article 15)

"Member State shall not impose a monitoring obligation on providers, when providing the services covered by Articles 12, 13 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity."

Interpreted in two judgements of the CJEU

C-70/10 - Scarlet

C-360/10 - Netlog



Other ECD provisions

general information requirements and pre-contractual information requirements

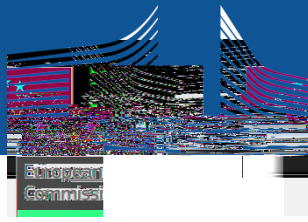
commercial communications (including for regulated professions) have to be clearly identified

electronic contracting should be allowed





E-commerce Action Plan of 2012



Scope and ambition

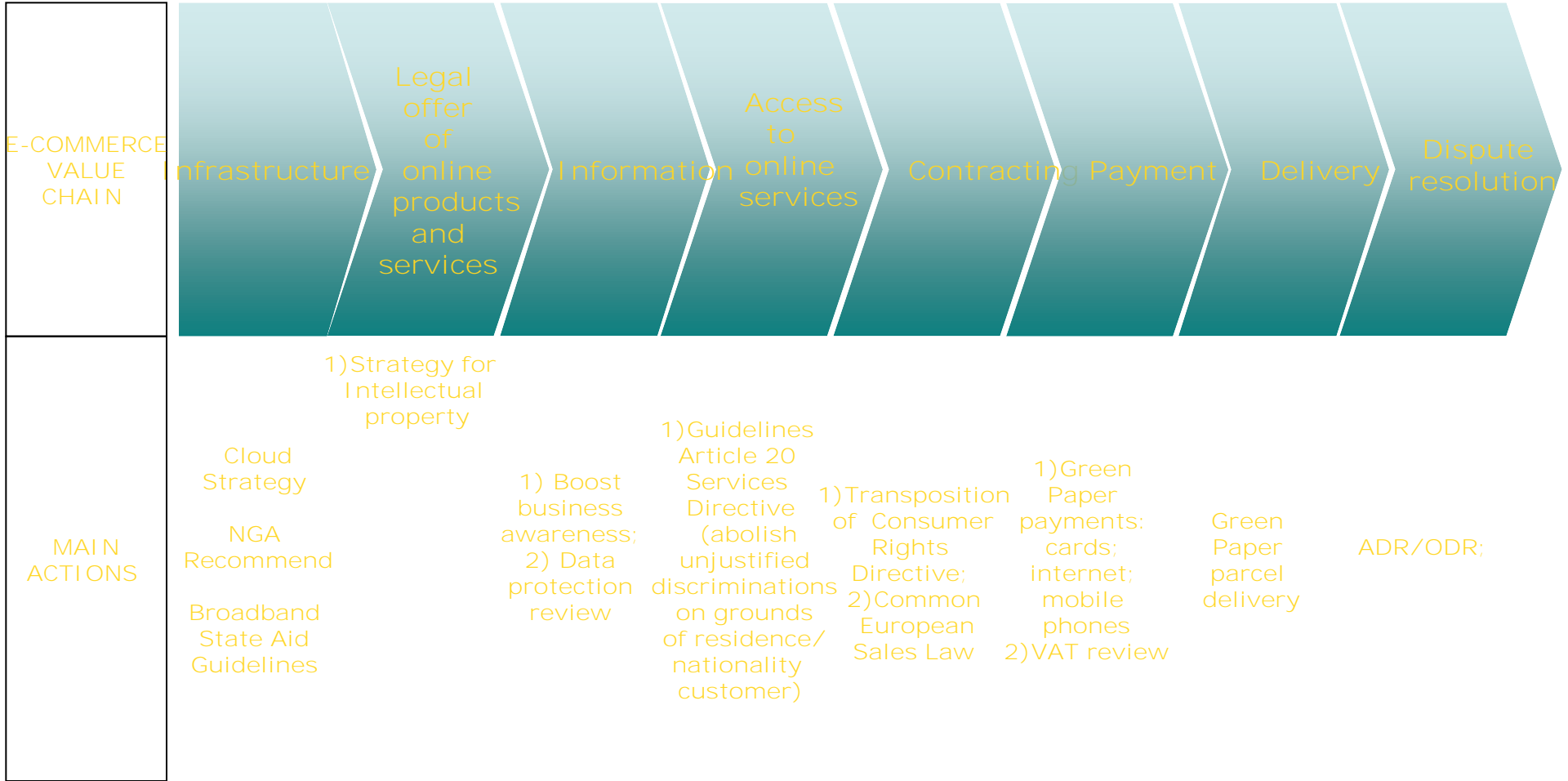
Adopted on 11 January 2012 and provides "a vision" of the Commission on on-line services + strategy + action plan

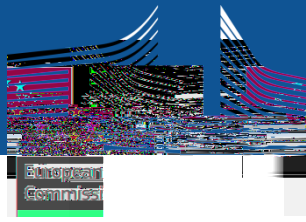
Identification of five priority areas + creation of a coherent framework

Complements previously announced initiatives

No revision of the E-commerce Directive







Classical "trust" issues (I)

Data protection

72% of Internet users are worried about giving away too much personal data

Erodes trust in online services and holds back the growth of the digital economy

But also: fragmented legal environment with different regimes in 27 Member States, legal uncertainty for business

Need to simplify and not to unnecessarily hinder new online business models

Action: Proposal for a General Data Protection Regulation (25 January 2012)

VAT

Complexity of the VAT system can dissuade businesses from selling online in another Member State

Setting up a "one-stop-shop" would encourage and facilitate cross-border e-commerce

Similar goods and products should be subject to the same VAT rate

Action: Action Plan on the future of VAT (December 2011); Proposals on the convergence between online and the physical environment (2013)



Classical "trust" issues (II)

Payments

35% internet users do not buy online because of concerns on payment security

Excessive costs of payment for traders and consumers; lack of transparency

Risk of fraud, liability issue, privacy concerns

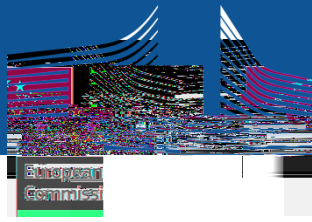
Action: Public consultation on card, internet and mobile payments (12 January 2012) + legislative proposals (revision Payment Services Directive; EU legislation on multi-lateral interchange fees for credit cards)

Postal delivery

10% people do not buy online because of delivery concerns

Lack of transparency on prices and of clarity on responsibility

For SMEs/consumers: less attracted to engage in cross-border e-commerce fearing long delivery times





Useful links

E-commerce Action Plan

http://ec.europa.eu/internal_market/e-commerce/communications/2012/index_en.htm

Digital Agenda for Europe

<http://ec.europa.eu/digital-agenda/>



Thank you for your attention!

Any questions?

