

DG GROW

Meeting between Commissioner BIENKOWSKA with Mr. [REDACTED]

VP, Amazon EU Retail

Brussels, 13 October 2016, 15h00

Name of Cabinet Member: Fabrice Comptour

Name of the Director who has cleared the briefing: Hubert GAMBS

BASIS request ID: CAB 459

Room, time:

Name of main contact person: [REDACTED]

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Directorate/Unit: E/3

**BRIEFING NOTE: Amazon and EU Regulation of e-Commerce and
Entrepreneurship support**

Scene setter/Context of the meeting:

You will meet Mr. [REDACTED] who is vice-president at Amazon and responsible for Amazon's retail business in EU. The meeting is expected to concern DSM (geoblocking, Parcel delivery & Platforms), E-Commerce (Counterfeit MoU/IPRED, Product safety & payment Issues) and Start-ups/Scale-ups. The focus of the meeting is expected to be on the E-commerce topics in particular.

Within the DSM initiative, the Commission has adopted or will adopt regulatory proposals affecting e-Commerce. Amazon is expected to support Commission's proposals to regulate E-Commerce on geoblocking, Parcel delivery and Online Platforms and will present its views about proposed or future regulation on IPR Enforcement, Product Safety and Online payments.

In IPR enforcement, the role of online intermediaries is one of the main issues to be analysed in the IPRED REFIT analysis and possible review. Amazon replied to the public consultation on the IPR enforcement framework, that IPRED achieved its objectives and there is no need to review it. Please note that in the Platform Communication, the Commission announced that it will not touch the e-Commerce Directive, which regulates platform liability.

On payments, Amazon wishes to discuss its concerns about the draft Regulatory Technical Standards (RTS) prepared by the European Banking Authority (EBA) on "Strong customer authentication and secure communication (SCA-SC)", on the basis of the mandate given in the new Payment Services Directive (2015/2366/EU), presently subject to a public consultation. The payments file is in the portfolio of Vice-President Dombrovskis. The issue at stake is technical and highly sensitive politically; DG FISMA advises prudence and circumspection.

Amazon will present its entrepreneurship support activities (Market Place and "Launch Pad" programme) and would like to explore possible cooperation with the Commission Start-up initiative (DG GROW).

Objective of the meeting:

Exchange of views including to inform about the outcomes of the public consultation and indicate possible directions in the European start-up and scale-up policy.

Find out in more detail Amazon's start-ups support strategy and view so far on their partnering up with start-ups in Europe as well as our entrepreneurial ecosystem.

MAIN KEY messages

- Companies may tailor their offers to the markets they target but have to treat customers from another Member State as they treat local customers, not better, nor worse.
- Too many non-compliant products are placed onto the Single Market, including through online sales and via imports from non-member countries.
- We are faced with a very difficult and complex reality, where commercial scale IPR infringement activities have become more frequent and therefore very harmful to the EU economy.
- We are currently evaluating the overall functioning of the current legal framework of IPR enforcement.
- Payment in E-commerce is in the portfolio of Vice-President Dombrovskis and DG FISMA.

KEY messages

Geo-blocking

- Unless it can be justified, companies should no longer discriminate their customers according to their place of residence or place of establishment. Customers from abroad should be treated in the same way as local customers.
- The proposal fully respects the freedom of enterprises to adapt their general conditions of access, including prices, to the markets they target. The regulation allows for seasonal sales or special promotions as well and does not oblige companies to deliver or to provide cross-border after-sale services.
- To increase transparency, the proposal bans blocking access to websites and automatic re-routing. Traders are free to choose the technological means to implement these rules.

Cross-border parcel delivery

- Improving cross-border parcel delivery services is a high priority for the Commission, as a step towards completing the digital single market. The Commission wants to see rapid and tangible progress to improve the quality of service and affordability.
- The Commission welcomes innovation and competition in the parcel sector that brings consumers choice and better quality delivery services. Our proposal for a regulation on cross-border parcel delivery aims to encourage choice and competition.
- Now that it's not only national postal operators that delivery parcels to consumers, regulators need to know which companies are active on parcel markets. The proposal for a regulation on cross-border parcel delivery has been designed to minimise the administrative burdens it will impose on companies. In some Member States postal regulators already ask for this information from parcel delivery companies.
- Only universal service providers will be required to submit their prices to national postal regulators who will be required to assess affordability. The Commission has no plans to propose price regulation.

Question to the interlocutor:

What are Amazon's plans for expanding its delivery services in Europe?

Unfair B2B practices in Platforms

- Online platforms are instrumental for the DSM and enabling SMEs to access a wider market. Due to the possible dependency of small business users on platforms we need to be sure that platforms behave in a responsible, fair and transparent way.

- No plans for any horizontal regulation. Considering the quickly changing online environment, voluntary efforts and self-regulation of market players could be one of the ways forward.
- We launched an in-depth fact-finding exercise to verify whether unfair B2B practices could risk impacting innovation or market access. We are glad we can count on Amazon's cooperation in this exercise.

IPR Enforcement in e-Commerce

- We are faced with a very difficult and complex reality, where commercial scale IPR infringing activities became more frequent and therefore very harmful to the EU economy, and in particular to the individuals and companies who are supposed to benefit from these rights.
- Online intermediaries, unwittingly and by the very nature of their legitimate business activities provide the infrastructure for commercial scale infringers; therefore they will continue to play a key role in developing this policy, in our legislative as well as self-regulatory initiatives.
- The Commission is evaluating the overall functioning of the current legal framework for IPR enforcement. An evaluation study has been launched; a dedicated public consultation ended in April and we will soon publish the results.
- If this evaluation shows the need to review or complement the directive, the Commission will later make its proposal(s), in line with the wishes of the Member States and the European Parliament. Proposals for an IPRED review are expected not before the end of 2016. Since the initiative also became a REFIT exercise we will also adopt an evaluation report.

- Progress has also been made on setting up self-regulatory "follow the money" schemes between rightholders and intermediaries. The existing MoU on the sale of counterfeit goods via the Internet has been strengthened by the inclusion of Key Performance Indicators. This will mean that its impact will be measurable over time. It will also provide empirical evidence for future initiatives.
- Together with the relevant stakeholder groups, DG GROW is developing cooperation schemes for three other intermediary services, namely advertising, payment and shipping service providers. DG GROW is also progressing with its work to ensure adequate protection of IP in supply chains.

Question to the interlocutor:

It would be useful to know more about the expectations of Amazon with regard to the modernisation of the IPR enforcement framework.

Product safety in e-Commerce

- Too many non-compliant products are placed onto the Single Market, including through online sales and via imports from non-member countries.
- In 2017 the Commission will launch a comprehensive set of actions to strengthen market surveillance capacities in the EU and to step up efforts to keep unsafe products off the EU market.
- The Single Market can only function well if the EU legislation on products is correctly implemented by everyone on the ground to maintain the highest level of protection and to safeguard the competitiveness of businesses across the EU.
- The EU customer should be able to trust that products are compliant and safe, whether sold on- or offline and regardless of the business structure that may be behind an online platform.

Payments in E-Commerce

- The expertise on this issue is with Vice-President Dombrovskis and DG FISMA.
- The Commission communicates with many different market actors and the voices that are expressed on this and other issues are varied. The EBA public consultation closed on 12 October and the replies have to be analysed.
- No decisions on the issue of EBA RTS will be taken by the Commission before next year, when the EBA submits the final RTS to the Commission.

Entrepreneurship support by Amazon and the Commission

- We have all been working hard and with good results on clearing the way for entrepreneurs to start-up companies in Europe. Now is the time to take the next step for those start-ups to scale-up into major companies and globally.
- As we know it is the rapidly-growing companies that generate a disproportionately large share of new jobs. It is on average 6% of companies who create more than 50% of all new jobs.
- Our public consultation on the possible Start-up/Scale-up Initiative has shown that there are three sets of barriers in the way in Europe: legal and regulatory environment that hampers rather than enables businesses to scale, especially cross-border; insufficient access to: skilled workers, relevant finance and IPR protections; European start-up and scale-up ecosystem that needs to be better interlinked to reap full "benefits of scale"
- We are now in the process of designing our policy response. We are determined to add real, practical value through the EU level policy making, including through a sense of real partnership also with key private stakeholders. We are listening.

Question to the interlocutor:

- *How many companies are there in the Launchpad (and how many specifically from Europe), how much does it cost them and have you quantified what (how many transactions, including cross-border and of what value) happened so far. What are the projections in terms of growth rates?*
- *How do you select Launchpad relevant companies? Do you also buy out companies you discover through Launchpad?*
- *What are the main obstacles to trading cross-border in Europe – from your point of view and from your startup-partners point of view (delivery, payment methods, taxes etc.)?*
- *Are there marked differences between Europe and other regions: in terms of the profile and success of start-ups and behaviour of customers?*

Defensives / Q&A

Geo-blocking

Does the proposal give the customer right to have after-sale services where he/she resides?

- No. Nothing under this proposal changes the current provisions of after-sale services.

Will traders have to comply with foreign consumer law?

- The current proposal does not amend or overwrite applicable rules on consumer law and jurisdictions.
- What the geoblocking proposal does is merely providing assurances to traders that mere compliance with these new rules will not trigger the application of foreign consumer law.

Are you obliging traders to accept any type of payment means?

- No. Traders remain free to decide which means of payment they accept provided that they treat local and foreign customers in the same way.
- This non-discrimination rule is based on progress made on payment services, including safety (strong customer authentication) and cost of transactions.

Cross-border parcel delivery

Why don't you leave it to the market to act?

- The cross-border parcel market is not competitive for all senders. For customers wanting to send individual or small shipments in many member states and/or in remote areas, the choice of cross-border delivery services is limited.
- Self- regulation (i.e. the 2013 Parcel Roadmap) has improved neither affordability nor regulatory oversight.
- There is also a history of anti-competitive behaviour in the parcel market.

Why are you increasing regulatory oversight for all delivery operators? Is Amazon included?

- Yes, Amazon falls within the scope of the article of the regulation that requires the provision of data to national postal regulators as it is active in more than one EU Member State.
- Any undertaking that is involved in the clearance, sorting, transport and distribution of parcels is within scope, except if they are only responsible for transport, and providing they have over 50 employees or are active in more than one Member State.
- The Postal Services Directive (2008/6/EC, Article 22a) already contains requirements that all postal operators should provide information to National Regulatory Authorities to ensure conformity with the Postal Services Directive or for clearly defined statistical purposes, providing it is proportionate with the tasks of the National Regulatory Authority.
- The current lack of information on cross-border parcel operators and parcel flows, and the lack of regulatory attention paid to cross-border activities make it difficult to gain a sufficient understanding of the market.

Why is more regulatory oversight for all operators needed?

- In some Member States the scope of regulation does not cover all the parcels that are used for e-commerce. This leads to fragmentation of the single market, gaps in statistical data and regulators who are ill-equipped to identify structural issues in the market.
- More standardisation of the information that parcel operators are required to provide to postal regulators in different Member States will make compliance easier, as well as clarifying legal obligations. Additional regulation should not create undue

administrative burdens and must respect the principle of proportionality.

Will the Commission ensure that Amazon can provide its same day delivery services in Paris?

- Aware of the media reports that Paris authorities have threatened to take action over Amazon's new express delivery service because they are concerned about the impact on local shops.
- Encouraging cross-border e-commerce is one of the pillars of the Digital Single Market strategy.
- The Commission is monitoring developments closely.

Unfair B2B practices in Platforms

Question: Why does the Commission focus on unfair trading practices in B2B relations on online platforms?

During the public consultation preceding our Communication a number of respondents complained about alleged unfair B2B practices. Our ensuing fact-finding exercise is planned to conclude by spring 2017. At this point of time, we do not have pre-conceived ideas in terms of the outcome of the exercise.

Question: Why is competition law not sufficient to tackle unfair trading practices of online platforms?

Answer: If the market player applying unfair practices is not in a dominant position, such practices can often not be addressed by competition law. In practice, a dominant position is the exception rather than the rule.

Question: Would any future legislative proposal on platforms aim to protect European companies against American ones?

Answer: Our aim is to create a level playing-field in which all companies, regardless of their country of origin, are able to compete and trade on an equal footing.

Question: The really important issue is how liability for illegal content is regulated. Is the Commission going to preserve the existing liability regime?



IPR Enforcement in e-Commerce

Will the Commission propose new rules for IPR enforcement?

- The DSM Strategy announced that the Commission would modernise the enforcement of IPR, focusing on commercial-scale infringements (the 'follow the money' approach) as well as its cross-border applicability, in 2016.
- In order to assess the possible scope of this exercise the Commission is evaluating Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED).

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Will the Commission reinforce obligations for intermediaries?

- Online intermediaries have a key role in implementing the EU's IPR enforcement policy.
- Already today they are actively involved through the Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet, of which Amazon is a party.
- The Commission now evaluates the legislative framework and assess the need for modernisation. However, it is too early to speculate about its possible scope or content.

Will the Commission continue to support self-regulatory initiatives between rightholders and intermediaries?

- The Commission believes very much in self-regulatory, so-called follow-the-money initiatives, in the area of IPR enforcement, as already stipulated in the 2014 EU IPR enforcement action plan. Voluntary arrangements can, in certain circumstances, provide flexibility to adapt quickly to technological developments and deliver efficient solutions.
- The Memorandum of Understanding on the sale of counterfeit goods via the Internet has proven its value added in the prevention of IPR infringements. We have now strengthened the agreement with the inclusion of Key Performance Indicators (KPIs) so as to be able to judge its impact over time.
- In parallel we have also, now, engaged other key actors in the market place; notably advertising agencies, payment service providers and cargo/shipping companies with a view to developing MoUs with similar principles of cooperating to counteract counterfeit goods entering the marketplace.

Product safety in e-Commerce

Public consultation on the Internal Market for goods – enforcement and compliance

One of the priorities to deliver the Single Market Strategy in 2017 is a new initiative to strengthen enforcement and compliance for goods.

The public consultation on this initiative is open until 31 October 2016. Online platforms, from within or outside the EUs, are an increasingly popular supply routes for EU customers to purchase products. They are however also a source on unsafe and non-compliant products. Amazon's contribution to this public consultation will be most welcome.

Payments in e-Commerce

Question: Does the Commission intend to promote payment security over consumer convenience, to the detriment of e-commerce actors?

Answer: While the consumer convenience is a relevant factor for payments, there are many other parameters that need to be considered by the Commission, notably payment security, safety of personal data, technology and business model neutrality and cost of fraud sustained by the society, including consumers.

On the other hand, one of the aims of the PSD2 is also to stimulate the payments market and create incentives for new, much safer, but at the same time innovative and convenient, solutions for payments. One of such solutions is biometry (e.g. finger print, iris scan, or voice recognition), which could be used to make payments both secure and even more convenient than today. Amazon is already testing such solutions (voice recognition), to my understanding.

Entrepreneurship support: Amazon & Commission

Question: What are the benefits of matching start-ups with mid-caps and larger corporations?

Answer: In the Consultation, the idea of establishing matchmaking platforms between start-ups, medium-sized and large companies was supported by over 65% of the respondents. 'Matchmaking measures' were repeatedly highlighted as very important for start-ups in the open questions, position papers and also came up in all direct contacts with the start-up community itself.

This idea comes from real entrepreneurs, as a practical instantiation of policies aimed at 'interconnecting of the European ecosystems' and 'increasing innovativeness and competitiveness of the European industry and firms'.

Matchmaking big and small helps small access a larger/stable client base, skills and infrastructure and also increases start-ups 'Exit' options by mobilising 'new' private capital. It serves to also accelerate companies in the more traditional sectors.

Question: What is the Commission doing to help startup and scale-ups grow in the European Single Market and is it a policy priority?

Answer: There is already a plethora of relevant and successful policies and strategies across the European Commission. Accelerating all types of innovation, increasing diversity of capital available, accelerating digital transformation, addressing skills shortages, deepening of the Single Market to help cross-border trade and links. But barriers persist and yes, for us accelerating the success of start-ups and scale-ups in Europe and globally is a priority. In the 1st half of 2016, public consultation on start-ups was organised to seek direct feedback and new ideas from all relevant stakeholders on how the environment for start-ups and especially scale-ups in Europe could be improved. The Commission will report on the outcome of the public consultation in the Staff Working Document that will be published in November.

Question: What is the added value in bringing together the initiatives that are already ongoing in the Commission?

Answer: Streamlining and demonstrating political leadership in the area of startups and scaleups is extremely important for the stakeholders. It is the necessary answer to the repeated plea throughout the broad consultation process. Putting the multiplicity of relevant actions together increases their publicity, visibility and impact. Internally, it helps fostering better cooperation and coordination across the Commission services themselves. Moreover, the majority of initiatives so far concentrated on helping entrepreneurs to start-up while it became clear that now more needs to be done to help them scaling up. It is rapidly-growing companies that generate a disproportionately large share of new jobs. Studies find that between 5-7% of companies create more than 50% of new jobs.

Background information

Geo-blocking

The Digital Single Market Strategy and the Single Market Strategy announced legislative action to put an end to unjustified geo-blocking and to prevent discrimination of consumers based on nationality or country of residence. The Commission proposal was adopted on 25 May 2016.

It aims at ensuring that EU customers are treated in the same way as local customers in situations where there is obviously no justification for different treatment.

The proposal would prohibit automatic re-routing of a customer to a different website and completely blocking access to a website. There is no intention to harmonise prices across Member States. Traders will set their prices according to national markets. However, customers from abroad must be able to access the goods and services under the same conditions as locals.

Geoblocking is a priority for the Slovak Presidency and a general approach in Council could be reached still in 2016.

Cross-border parcel delivery

Amazon is interested in the parcel delivery proposals both as an e-retailer (i.e. a customer of delivery operators) and as a delivery operator itself. Smaller retailers selling through its Marketplace can arrange physical delivery to the final customer themselves (and only place a 'virtual listing on the Amazon website) or use 'Fulfilment by Amazon', where sellers give their (physical) inventory stocks to Amazon who then arranges delivery on their behalf.


Amazon is a very significant customer of national postal operators (universal service providers) and express companies and is able to negotiate very favourable rates due to its market power. It will not benefit from more affordable "public list prices" and may be concerned that lower prices for smaller companies could make Amazon's delivery services less attractive. Amazon's expanding delivery services, include same day delivery services and parcel lockers in some Member States and are seen as a threat by some universal service providers.

IPR Enforcement in e-Commerce

On IPR Enforcement, the DSM Strategy and the Single Market Strategy announced that "the Commission will make legislative proposals in 2016 modernising enforcement of intellectual property rights (IPR), focusing on commercial-scale infringements (the 'follow the money' approach) as well as its cross-border applicability". This will be achieved through an evaluation and possible review of the Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED). Also the Copyright Communication of 9.12.2015 announced that the Commission will engage, with all parties (including rightholders and intermediaries), to set up and apply 'follow-the-money' mechanisms, self-regulatory initiatives ("MoUs") to deprive commercial-scale IP infringers of revenue. The 2016 Commission work programme qualifies the evaluation of the IPR enforcement directive as a REFIT exercise.

The DSM Strategy announced the introduction of a modern, more European copyright law: legislative proposals should reduce the differences between national copyright regimes and allow for wider online access to works across the EU, including through further harmonisation measures. The aim is to improve people's access to cultural content online – thereby nurturing cultural diversity – while opening new opportunities for creators and the content industry. In particular, the Commission wants to ensure that users who buy films, music or articles at home can also enjoy them while travelling across Europe.

The Strategy linked the reform of the substantive copyright rules closely with their enforcement. It announced that the Commission will also look at the role of online intermediaries in relation to copyright-protected work. It will step up enforcement against commercial-scale infringements of intellectual property rights. In concrete terms the Strategy states that "the Commission will make legislative proposals [...] in 2016 [...] modernising enforcement of intellectual property rights, focusing on commercial-scale infringements (the 'follow the money' approach) as well as its cross-border applicability".



Implementing this initiative DG GROW now launched an evaluation of Directive 2004/48/EC on the enforcement of intellectual property rights, assessing the functioning of the Directive and the concrete need for adjustments. Main

issues for evaluation seem to be the identification of infringers, cross-border execution of injunctions, the role of intermediaries and the calculation of damages, as identified in previous work on IPRED and requested by Council and Parliament. DG GROW contracted out work on studies on the key issues of the enforcement framework to provide a deeper evidence base for the review and launched a public consultation on 9 December 2015, as a means to assess the functioning of the Directive and the scope of the possible review. We received almost 500 responses to the consultation and will soon publish the results.

Single Market Strategy and IPR enforcement

The Strategy states that "as announced in the Digital Single Market Strategy for Europe, the Commission will review the IPR enforcement framework, to respond to the increasingly cross-border nature of infringements. It will favour a 'follow the money' approach to deprive commercial-scale infringers of their revenue flows, since it is these IPR infringements that do the most harm to the EU economy. In line with the objectives of this Strategy, specific attention will be paid to SMEs, with a view to helping them enforce their intellectual property rights."

The Copyright Communication and IPR enforcement

On 9 December 2015 the Commission adopted its Communication "Towards a modern, more European copyright framework". The Communication stated that the Commission will assess options and consider by autumn 2016 the need to amend the legal framework focussing on commercial-scale infringements, inter alia to clarify, as appropriate, the rules for identifying infringers, the (cross-border) application of provisional and precautionary measures and injunctions, the calculation and allocation of damages and legal costs. It also announced that the Commission will take immediate action to engage, with all parties concerned, in setting up and applying 'follow-the-money' mechanisms, based on a self-regulatory approach, with the objective of reaching agreements by spring 2016 and that those codes of conduct at EU level could be backed by legislation, if required to ensure their full effectiveness.

Directive 2004/48/EC on the enforcement of intellectual property rights

Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED) is a legislative instrument whose overall aim is the better functioning of the internal market. What it does is approximate the laws of the Member States in the area of civil enforcement of Intellectual Property Rights (IPR). It contains minimum harmonisation rules on measures and remedies available to

rightholders in order to enforce their IPRs, meaning that Member States can provide for greater protection if they so choose. IPRED covers all types of rights, notably copyright, trademark, patent and design. Specifically as regards copyright, it complements the EU's 2001 Copyright Directive.

Position of the other institutions


The **Council**, in its conclusions of 4 December 2014 on IPR enforcement, recalled that several aspects of IPR enforcement not contained in the Action Plan were identified as raising questions on the basis of the consultation process carried out by the Commission from 2012 to 2014 and as a follow-up to the adoption of the Commission's report on the application of Directive 2004/48/EC, including the use of tools available to identify IPR infringers; the role of intermediaries in assisting the fight against IPR infringement; and the allocation of damages in IPR disputes. The Council encourages the Commission to consider all possible options to address these matters.

The **European Parliament**, in its resolution of 9 June 2015, calls on the Commission to come up with a detailed assessment of the limitations of the current legal framework as regards online activities and, if appropriate, with proposals for adapting the EU legislative framework to the internet environment.

The follow-the-money approach in IPR enforcement

The approach consists of designing policy measures that identify and disrupt the money trail for commercial scale IP-infringing activities.

The Memorandum of Understanding (MoU) on the sale of counterfeit goods via the Internet, brokered by the Commission in 2011, was the first voluntary cooperation agreement between stakeholders developed at European level aiming better enforcement of IPR. The MoU established a code of practice in the fight against the sale of counterfeit goods over the Internet. It covers e-commerce platforms as well as brands in the field of fast moving consumer goods, consumer electronics, fashion, luxury goods, sports goods, film, software, games and toys. It applies across all 28 Member States of the Union.



Product safety in e-Commerce

Vendor obligations

Products meant for placing in the EU market, offered by catalogue or by electronic commerce, should comply with EU harmonised legislation, if the catalogue or website directs its offer to the EU market and includes an ordering and shipping system.

Products not meant for the EU market or not compliant with EU legislation have to be clearly indicated (e.g. by a visual warning).

Products offered for sale by online operators based in the EU are considered to have been placed on the EU market, regardless of who placed them on the market (the online operator, the importer, etc.).

Products offered for sale by online sellers based outside the EU are considered to be placed on the EU market if sales specifically target EU consumers or end-users.

The assessment of whether or not a website located inside or outside the EU targets EU consumers has to be done in each case.

When an online operator delivers in the EU, accepts payment by EU consumers/end-users and uses EU languages, we consider that the operator has expressly chosen to supply products to EU consumers or other end-users.

Online operators may offer online for sale an individual product already manufactured or a product type. In product type offers, placing on the market occurs after manufacturing.

Products offered for sale by an online operator are likely to be (or have already been) ordered by consumers or businesses in the EU. They are supplied in the context of a commercial activity by way of online sales, generally in return for payment. However, the supply of products free of charge can also be a commercial activity.

Consumer to consumer (C2C) sales, are generally not considered commercial activities. However, the assessment of whether a C2C product is being supplied in the framework of a commercial activity has to be done on a case-by-case basis, taking into account all relevant criteria such as the regularity of the supplies, the intention of the supplier, etc.

Products offered for sale by online operators need to comply with all applicable EU rules when placed on the EU market. Compliance can be physically verified by responsible authorities when the products are in their jurisdiction, at the soonest at the customs.

Fulfilment service provider obligations

Products offered by online operators are generally stored in fulfilment houses located in the EU to guarantee their swift delivery to EU consumers. Products stored in such fulfilment houses are considered to have been supplied for distribution, consumption or use in the EU market and thus placed on the EU market. When an online operator uses a fulfilment house, by shipping the products to the fulfilment house in the EU, the products are in the distribution phase of the supply chain.

Parcel service providers only provide services of clearance, sorting, transport and delivery of parcels.

Fulfilment service providers provide to other economic operators, like online vendors, a larger set of services like storage of goods, packaging, sending them to end-customers and dealing with returns. Some offer all these services. Others only part of them. Some are global operators and many are micro businesses. They are a necessary element of the product supply chain and in its placing on the market.

Enterprises, like Amazon, which act as a fulfilment service provider going beyond parcel service providers, should be considered as a distributor for the purposes of EU harmonised law on product safety and comply with its obligations.

Payments in e-Commerce.

The new Payment Services Directive (PSD2) introduces strict security requirements for the initiation and processing of electronic payments, which apply to all payment service providers. Such strict general approach, fully supported by the Council and the EP, should significantly **reduce current fraud levels** for all new and more traditional means of payment, **especially online payments**, and help protecting the confidentiality of the user's financial data (including personal data). Once PSD2 becomes applicable and unlike today, payment service providers will be basically obliged to apply SCA whenever a payer initiates an electronic payment transaction.

For remote electronic transactions, such as online payments, the security requirements go even further, requiring a dynamic link to the amount of the transaction and the account of the payee as part of the SCA procedure, to further protect the user by minimising the risks in case of mistakes or fraudulent attacks.

Strong customer authentication is a process that validates the identity of the user of a payment service or confirms the validity of the payment transaction (more specifically, whether the use of a payment instrument is authorised). SCA is based on the use of two or more elements categorised as knowledge (something only the user knows, e.g. a password or a PIN), possession (something only the user possesses, e.g. the card or an authentication code generating device) and inherence (something the user is, e.g. the use of a fingerprint or voice recognition) to validate the user or the transaction. These elements should be independent (the breach of one element does not compromise the reliability of the others) and designed in such a way as to protect the confidentiality of the authentication data.

The draft RTS on SCA-SC, currently discussed at the EBA, is a key “level 2” legislation to be delivered under PSD2, which addresses in more detail the issue of security in the payment transactions. The draft addresses several “technical” requirements for SCA (what processes and actions payment service providers shall undertake in order to comply with SCA) and includes the exemptions that apply to the SCA procedure i.e. situations when the use of SCA is not required. As the main aim of PSD2 was the general improvement of the security of payment transactions and reduction of fraud levels, these exemptions are limited in number and scope.

It is the part of RTS related to exemptions from SCA for remote payments that causes negative comments from the part of the e-commerce market interested

in maintaining the status quo (weak or even no authentication for most online transactions). Above all, they claim that exemptions should become the norm and any form of authentication shall be applied by the individual PSPs as well as traders at their discretion, on the basis of the individual transaction risk-based analysis (also referred to as “targeted authentication”, which name is misleading) in order to increase consumer convenience. They claim that otherwise consumers could be discouraged from shopping online because of cumbersome payment processes. They also maintain that the mass of data they collect on consumers and their behaviour provides merchants and cards schemes with intimate knowledge about the consumers and are sufficient to identify suspicious transactions.

The **current situation greatly benefits** the big market players such as Visa, MasterCard, **Amazon** or PayPal, who can leverage their advantages (e.g. the Amazon 'One Click' solution for a purchase on Amazon) to offer better convenience to users. These players are however silent about the cost of fraud for the solutions they promote. Fraud costs remain hidden in the general pricing of their services to traders and are in turn passed to consumers through an increase in the consumer prices.

Card payments on internet constitute around 70% of all card fraud in the EU (while card transactions on the internet account for less than 10% of all card payments). Card schemes and e-wallet payment solutions like to underline their convenience if no SCA is used, but at the same time they charge heavy fees on merchants for “the protection/security of the transaction” (allegedly, in case of Paypal it is often 2-3% of the transaction value; cards schemes charge both fix and percentage fees for security purposes).

Furthermore, the effectiveness of current transaction-risk based analysis models advocated by Amazon is not considered as sufficient by any of the EU competent authorities to replace SCA. Its effectiveness is also not confirmed, to our understanding, by the fraud data analysis. Transaction risk-based analysis is mostly used today “post-factum” as one of the auxiliary techniques to create a “defensive parameter” around the electronic payments. Moreover, the data stored on consumer (consumer details) and their payments means by merchants raise significant security risks on their own, as traders, unlike payment service providers, are not subject to any specific data storage and handling rules when dealing with sensitive financial data.

As regards the issue of consumer convenience in payments, the arguments used by some e-commerce players appear questionable. **Eurobarometers and other surveys show that delivery and payment concerns (payment security,**

payment fraud and non-acceptance of electronic payment means) are the two biggest factors discouraging consumers from shopping online, including in a cross-border context. The issues of delivery and acceptance of payment means are now largely addressed by the geoblocking proposal, while payment security and payment fraud has been tackled by PSD2.

On top of this, the statistics clearly show that where SCA has been universally adopted and integrated with the online shopping experience, such as in the case of Netherlands (iDEAL), the consumer confidence and online purchases skyrocketed. Similarly, in Belgium, since the adoption of SCA by all banks the number of online purchasing transactions registers a solid year to year growth and no cases of falling sales due to SCA has been found.

Finally, once the use of **biometry** (finger print, iris scan, voice recognition) takes off as one of the elements used for SCA in a few years' time (various tests are already running in the EU and USA, including by Amazon), the argument of ultimate consumer convenience would be largely dismissed.

Entrepreneurship support by Amazon and the Commission

Amazon Launchpad

Launched in 2015, the program is geared towards startups called Amazon Launchpad, will help entrepreneurs "launch, market and distribute their products." Entrepreneurs will be able to use the platform to set up a storefront, providing users a simple onboarding process, custom product pages, inventory management and marketing materials.

The platform also allows startups to take advantage of Amazon storage facility, customer-service center and shipping arrangements.

Apparently Amazon is partnering with 25 crowdfunding platforms, startup accelerators and venture capital funds including Y Combinator, to get businesses they work with involved with the program.

Amazon.co.uk **Marketplace** enables to sell new, used, collectable and refurbished items alongside new ones. Marketplace is not an auction; the price is pre-set by the seller.

Relevant findings from the Public Consultation on the role of the EU for start-ups and scale-ups

The EU should continue what is good, provide more coherence and streamline info sources for start-ups – this requires a more coordinated approach within the EU.

A significant number of respondents called for more information and clarity as regards rules governing the participation of companies in the EU funded policies and programmes. Some argued that EU should continue implementing its successful programmes, such as e.g. COSME and SME Instrument, and they should get more funds to enable greater participation of potential and existing entrepreneurs. When it comes to Horizon 2020, some stakeholders were of the opinion that it should focus more on disruptive and open innovation.

Furthermore, the EU should **focus on connecting existing initiatives** (i.e. incubators, accelerators, start-up ecosystems) and to facilitate Member States' cooperation by providing means for exchange of information and dissemination of best practices.

The respondents argued that **access to information** on national, EU regulatory frameworks remain difficult, and that often-burdensome legal, regulatory, administrative and tax regulations and procedures prevent them from expanding cross-border. Furthermore, entrepreneurs face the situation that information is spread across numerous sources and often presented in a way that is not user-friendly. The same concern was raised regarding the information about financing opportunities offered by both the EU and the Member States. Nearly 85% of respondents called for better coherence and transparency in this area.

In the consultation access to finance was ranked highest among the barrier for starting a company, with over 71% stating that it is a barrier. Some respondents strongly argued that there is a need for new 'smart' sources of financing for start-ups and a set of incentives for investors to increase the volume of venture capital in Europe. Furthermore, a number of stakeholders underlined the need for increased private-public collaboration as a mean to finance start-ups throughout their whole life cycle.

Securing finance for expansion was listed by 65% of respondents as the number one obstacle to scaling up within the EU.

Nearly 60% of respondents pointed out the need for measures that would help start-ups to secure intellectual property rights (IPRs) and patents in the early stages of a company life. Furthermore, the need to develop intellectual property valuation models to better assess the value of intangible assets was highlighted by over 44% of respondents.

Furthermore, among main obstacles to fast growth, listed in the replies to open questions stakeholders pointed to the lack of qualified workers with digital and technical skills, lack of leadership skills to manage a fast growing company, limited access to government/corporate procurement, finance, distribution channels and infrastructure.

The need to increase support for digitalisation and establishing an innovation-friendly environment was mentioned throughout the consultation.

Amazon.com Economic data

Sales = 107 B USD (67 in USA; 37 Internationally (33%); 7,8 Web services).

Operating expenses: 104 B USD; Income before taxes = 1,568 B USD Provision for income taxes = 0,95 B USD = 0,88% of sales;

Net income = 0,596 B USD = 0,55% of sales.

Employees: 230.000, of which 40.000 in EU (+10.000 in EU in 2015). Thousands of new jobs planned in 2016, at all levels of education, experience and skills, including computer scientists and software development engineers.

EU Investment: 15 Billion € since 2010 in infrastructure and operations for fulfilment and customer service, Amazon Web Services data centres (in NL, IRL, DE, UK, ES, FR, SE, PL), and in its 12 EU R&D centres.

Amazon position

1. Amazon supports DSM initiatives, in particular:

- the proposal for a Regulation against Geo-blocking and other customer discriminations by nationality, place of residence or establishment;
- the proposal for a Regulation on Cross-border parcel delivery, and
- the Communication on Online Platforms.

2. E-Commerce legislative and regulatory issues:

- Enforcement of Intellectual Property Rights (IPR): Amazon
 - In 2011, signed the MoU against online sales of counterfeit goods;
 - Supports that the revised IPR enforcement directive keeps the limited liability regime for hosting service providers of Directive 2000/31/EC on e-Commerce.
- Safety of products sold online: the Commission Notice 'Blue Guide' on implementation of EU products rules of 2016, considers fulfilment service providers going beyond parcel delivery like Amazon, as distributors which have to comply with EU Product Safety legislation. Amazon thinks that products brought directly from outside the EU should also be subject to conformity obligations.
- Payment Services Standards: the revised Directive on payments (2015/2366/EC) is implemented by standards made by European Banking Authority, to be later adopted by the Commission. Amazon considers that the draft Regulatory Technical Standards on "Strong Customer Authentication and Secure Communication", are opposed by all the industry.

CV of Mr.

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