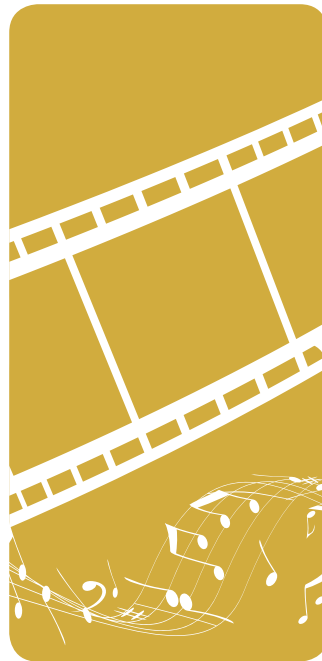


# Survey of e-commerce barriers within the EU

20 examples of trade barriers in the digital internal market



**The National Board of Trade** is the Swedish governmental agency responsible for issues relating to foreign trade and trade policy. Our mission is to promote an open and free trade with transparent rules. The basis for this task, given us by the Government, is that a smoothly functioning international trade and a further liberalized trade policy are in the interest of Sweden. To this end we strive for an efficient internal market, a liberalized common trade policy in the EU and an open and strong multilateral trading system, especially within the World Trade Organization (WTO).

As the expert authority in trade and trade policy, the Board provides the Government with analyses and background material, related to ongoing international trade negotiation as well as more structural or long-term analyses of trade related issues. We also publish material intended to increase awareness of the

role of international trade in a functioning economy and for economic development.

The National Board of Trade also provides service to companies, for instance through our SOLVIT Centre which assists companies as well as people encountering trade barriers on the internal market. The Board also administers the Swedish Council for Trade Facilitation, SWEPRO.

In addition, as an expert authority in trade policy issues, the National Board of Trade provides assistance to developing countries, through trade-related development cooperation. We also host Open Trade Gate Sweden, a one-stop information centre assisting exporters from developing countries with information on rules and requirements in Sweden and the EU.

**[www.kommers.se](http://www.kommers.se)**

Translation – This report was published in Swedish under the heading "Kartläggning av e-handelshinder inom EU – 20 exempel på handelshinder på den digitala inre marknaden".

# Preface

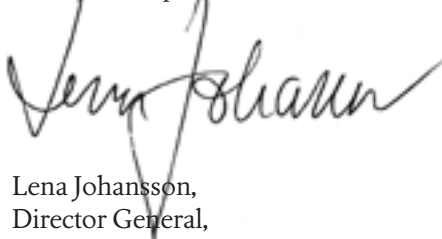
The characteristics of international trade are constantly changing. Opportunities to purchase goods via the Internet are one example of a development that has radically changed the potential of, and preconditions for, cross-border trade – both globally and within the EU internal market. Such developments create new preconditions or new barriers.

The EU's internal market allows us to freely trade goods and services. As citizens of the EU we are able to travel, live, work and study wherever we want. People are able to move freely and the same applies to the movement of capital. There is free movement within the internal market.

However, traditional trade barriers remain in place for digital commerce, but perhaps they have become more distinctive and exercise a more preventative effect. The potential of e-commerce means that it is even more important than ever to solve these traditional problems. But with these new trading opportunities new trade barriers are revealed that are more or less specific to e-commerce. This is what this report primarily deals with.

The report has been compiled by Olivier Linden, Markos Stavroulakis and Ola Landström from the Swedish Board of Trade. We would like to express our thanks to the companies who have contributed their time, in the form of interviews, and information – these have been essential in carrying out this report.

Stockholm, April, 2011

A handwritten signature in black ink, appearing to read 'Lena Johansson', written over a faint, light-colored rectangular stamp or watermark.

Lena Johansson,  
Director General,  
National Board of Trade

# Table of Contents

<b>Preface</b> .....	<b>1</b>
<b>1. Introduction</b> .....	<b>3</b>
<b>2. Ban on e-commerce as a sales form</b> .....	<b>4</b>
2.1 Ban on the online sales of pharmaceuticals in Germany .....	<b>4</b>
2.2 Ban on the online sales of contact lenses in Hungary .....	<b>4</b>
2.3 Ban on the provision of certain online gaming services in the Netherlands .....	<b>5</b>
<b>3. Establishment requirements</b> .....	<b>6</b>
3.1 Irish permit requirements for a Swedish online travel agency .....	<b>6</b>
3.2 Establishment requirements for the registration of top-level domain names .....	<b>6</b>
3.3 Requirements for the physical storage of customer details in Poland.....	<b>7</b>
<b>4. Barriers linked to sales conditions</b> .....	<b>8</b>
4.1 Consumer protection legislation – a fragmented body of regulations .....	<b>8</b>
4.2 Periods of special sales offers in France also apply to foreign e-traders .....	<b>9</b>
<b>5. Intellectual property barriers</b> .....	<b>10</b>
5.1 Residence requirement for the online purchase on iTunes.....	<b>10</b>
5.2 A fragmented market for downloading films .....	<b>10</b>
5.3 Virtual showrooms limited geographically .....	<b>11</b>
<b>6. Barriers to payment</b> .....	<b>12</b>
6.1 Danish card regulation hampers payment for cross-border e-commerce .....	<b>12</b>
6.2 Problems with the use of Swedish e-invoices in Germany .....	<b>12</b>
6.3 Money laundering legislation imposes an additional administrative burden on cross-border trade.....	<b>13</b>
6.4 Barriers to the registration of a VAT representative in Italy.....	<b>14</b>
6.5 Belgian constraints on advance payment negatively affect e-commerce companies .....	<b>14</b>
<b>7. Barriers linked to e-government</b> .....	<b>16</b>
7.1 Barriers to invoicing public authorities in Denmark.....	<b>16</b>
7.2 Barriers to the registration of medical devices in Italy .....	<b>16</b>
7.3 Barriers to the reporting of radio equipment in Spain.....	<b>17</b>
7.4 Barriers to accountants' submissions of tax returns on behalf of their clients via the Internet.....	<b>17</b>
<b>8. Conclusions</b> .....	<b>18</b>
8.1 Specific barriers to e-commerce?.....	<b>18</b>
8.2 Who is to blame for the refusal to deliver to other EU countries? .....	<b>18</b>
8.3 How can e-commerce barriers be resolved? .....	<b>18</b>
8.4 The importance of e-commerce for the future of the EU's internal market.....	<b>19</b>

# 1. Introduction

E-commerce has expanded considerably since the end of the 1990s in line with increased access to the Internet. Half of the productivity increase in the EU over the past 15-year period has been generated by information and communications technology (ICT) and, according to the European Commission, this trend will probably continue to accelerate. The Commission states that the ICT sector is currently “directly responsible for 5% of European GDP with a market value of EUR 660 billion annually, but it contributes far more to overall productivity growth (20% directly from the ICT sector and 30% from ICT investments)”.<sup>1</sup> Consequently, e-commerce forms a vital part of the EU internal market.

At the same time, a number of studies have shown that the EU’s internal market for e-commerce – what is known as the digital internal market – suffers from considerable flaws.<sup>2</sup> The EU’s online markets are still characterised by barriers that inhibit access to general European tele services, digital services and digital content. For example, at present four times as many music downloads are carried out in the US compared with in the EU. This is due to a lack of products on offer and fragmented markets. According to the Eurobarometer, 33% of consumers purchase products online within the EU, but only 7% do this across borders.<sup>3</sup>

There are several reasons for this level of fragmentation in the market, such as a low level of confidence in the Internet, a low level of broadband provision, deficient interoperability, cultural differences (with regard to language, payment methods, customer behaviour patterns) and barriers of a legal nature.

In this report, the Board has focused on the last category. We highlight examples that demonstrate the legal barriers that companies face when they wish to expand their operations into other EU countries.

First and foremost, we have gathered examples of barriers to the realisation of the digital internal market, from three different sources. The first important source is the barriers that, since 2002, have been reported to the Solvit Network<sup>4</sup> (the Board of Trade’s headquarters are also home to the Swedish Solvit Centre). In order to provide a more comprehensive picture of the problems that may arise, the Board has also carried out a number of in-depth interviews with companies who operate e-commerce in goods and services, with intellectual property management organisations and with other professional and industrial organisations. In addition, examples of barriers in the digital internal market have been obtained from the case law of the European Court of Justice. While we make no claims to have completely covered the area, we believe that, taken as a whole, these examples provide a clear picture illustrating this problem from a variety of angles.

The Board’s report is primarily a survey of barriers to free movement. We would like to stress that several of these barriers can be justified by the protection of legitimate interests, such as the protection of intellectual property rights, consumer protection or the protection of the environment and health. This study is not designed to conduct a legal assessment of each individual case as to whether these barriers are justified.

However, in certain cases presented here, breaches of EU rules have been observed and in these cases the national rules that have prevented the free movement have been amended after Solvit or the EU Commission took up the problem or following a ruling in the EU Court. The cases where a solution was achieved have been included in the study in order to illustrate how the EU rules on free movement are to be applied in the event of legal barriers that inhibit the free movement of goods and services within the EU.

We have identified six types of barriers in this study:

- **Bans on e-commerce as a sales form**, i.e. goods/services that are not permitted to be sold via the Internet in certain EU countries (Section 2, Examples 1–3).
- **Pure establishment requirements**, i.e. requirements that force e-commerce companies to be physically present in the host country in order to be able to sell their goods/services online (Section 3, Examples 4–6).
- **Barriers linked to sales conditions**, i.e. difficulties facing e-commerce companies when adapting their offers to different EU countries’ sales and consumer protection legislation (Section 4, Examples 7–8).
- **Intellectual property barriers**, i.e. the limitation of online content due to rules relating to intellectual property rights, often aimed at the protection of national interests (Section 5, Examples 9–11).
- **Legal barriers linked to payments**, i.e. difficulties facing e-commerce companies when taking payment from customers in other EU countries (Section 6, Examples 12–16).
- **Barriers linked to e-government**, i.e. problems experienced by e-commerce companies when foreign government authorities provide e-government services (Section 7, Examples 17–20).

Certain barriers fall into several of these categories, for example requirements relating to the scanning of e-invoices that are imposed by Danish authorities and which form barriers linked to both payment and e-government (see Example 17).

At the end of this report is a summary which includes some reflections and examines possible solutions to e-commerce barriers (Section 8).

## 2. Ban on e-commerce as a sales form

Certain products or services may not be sold via the Internet. None of the companies interviewed here took up this issue; however the praxis of the EU Court, among other sources, shows that rules as to what may or may not be sold online differ between the EU Member States. Three types of ban are presented below which have been examined by the Court and which are related to the online sales of pharmaceuticals (Section 2.1), contact lenses (Section 2.2) and the provision of online gaming services (Section 2.3).

### 2.1 Ban on the online sales of pharmaceuticals in Germany

#### **Example 1**

**Barrier:** *Pharmaceuticals may not be sold online*

**Country:** *Germany*

**Status:** *Ban revoked by the EU Court regarding OTC pharmaceuticals but remains in place for prescription pharmaceuticals*

Before 2003, it was only permitted to purchase pharmaceuticals over the counter (OTC) at a pharmacy in Germany. Web pharmacies from other EU countries were therefore prevented from selling their products online to German consumers. This ban was examined by the EU Court in 2003 regarding its compliance with EU law.<sup>5</sup>

Germany maintained that the ban was not discriminatory as it also prevented German pharmacies from selling pharmaceuticals online. However, the Court found that the German pharmacies were merely deprived of an additional alternative sales channel while foreign pharmacies could only use the Internet as a sales channel into the German market. Consequently, this led to a total ban for foreign operators and a partial ban for domestic operators. According to the Court, the German ban then formed a trade barrier in accordance with the EU rules on free movement of goods (Article 34 of the Treaty on the Functioning of the European Union).

Germany further maintained that such barriers were justified, taking into consideration the protection of legitimate interests, in this case the protection of health. The Court partially agreed with this argument and observed that the ban on the sales of prescription pharmaceuticals via the Internet was justified by the necessity of effectively and responsibly checking the

legitimacy of a doctor's prescription in order to be able to ensure that each medicine is issued to the customer. However, the Court found that this argument could not be applied to OTC pharmaceuticals.

Consequently, the EU Court rules that Germany was permitted to forbid the sales of prescription pharmaceuticals via the Internet but was not permitted to prevent "virtual pharmacists" from other EU countries from selling OTC pharmaceuticals online.

### 2.2 Ban on the online sales of contact lenses in Hungary

#### **Example 2**

**Barrier:** *Contact lenses may not be sold online*

**Country:** *Hungary*

**Status:** *Ban revoked by the EU Court*

Another example of a ban on online sales relates to the Hungarian requirement that sales of contact lenses must occur in a physical store "with a minimum area of 18 square metres" and in the presence of trained personnel. This requirement resulted in a ban on the online sales of contact lenses. In 2010 the EU Court examined this ban in light of the EU rules on free movement of goods.<sup>6</sup>

The Court found that the ban on Internet trade, even if it was not discriminatory, had a greater impact on foreign operators, as the Internet is often the only sales channel open to them. The Hungarian rules were therefore considered to constitute a trade barrier under EU law. Hungary, however, maintained that the barrier was justified, with reference to the protection of legitimate interests, including the aspect that "contact lenses are to be supplied by qualified staff who are to alert the customer to those risks, carry out an examination of the customer and recommend or advise against the wearing of lenses". However, the Court considered that customers could obtain this advice from a different source before the delivery of the contact lenses when sales took place via the Internet, and that "those can be given to the customer by means of the interactive features to be found on the supplier's Internet site".

For these reasons the Court found that the Hungarian rules were not in compliance with EU law. The ruling did, however, provide a certain opening for the limitation of online contact lens sales, for example related to the initial order.



## 2.3 Ban on the provision of certain online gaming services in the Netherlands

### **Example 3**

**Barrier:** *Cross-border gaming services may not be provided on the Internet*

**Country:** *The Netherlands (there are also similar bans in other countries)*

**Status:** *Ban approved by the EU Court*

The body of regulations governing the European gaming market is fragmented. In certain EU countries gaming services are exposed to competition, whereas in other countries they are limited to a few operators only (exclusive rights). The development of the Internet and the technical opportunities available that online gaming services offer to gamblers in other EU countries has led to a number of legal disputes in this field. The EU Court has, over the course of the past few years, attempted to

determine which types of constraints the Member States may impose on foreign gaming operators providing online services.

One interesting case in this context involved a Dutch ban on foreign gaming operators providing their online services to gamblers in the Netherlands.<sup>7</sup> In its ruling, which was issued in June 2010, the EU Court determined that such a ban did constitute a trade barrier under the EU rules on free movement of services (Article 56 of the EU Treaty). However, the Court considered that the barrier was justified with regard to the objective of combating fraud and criminal activity. In the ruling it was noted that *“because of the lack of direct contact between consumer and operator, games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games”*.

The Dutch ban was therefore found to be compatible with EU law. As far as the Board is aware, there are several other EU countries, including Sweden, that limit possibilities for foreign operators to provide online gaming services.

## 3. Establishment requirements

In contrast to traditional physical trading, in principle no local infrastructure for cross-border e-commerce is required. A number of situations have been drawn to the Board's attention in which certain EU countries have imposed local establishment requirements on foreign companies. These requirements have been designed in different ways. Below are three examples, requirements relating to permits in the host country in order to supply certain travel services (Section 3.1), requirements of a physical presence in order to register a local top domain name (Section 3.2) and requirements related to the storage of consumers' personal details being physically stored in the host country (Section 3.3).

### 3.1 Irish permit requirements for a Swedish online travel agency

#### **Example 4**

**Barrier:** *Permit requirement for foreign online travel agencies*

**Country:** *Ireland*

**Status:** *Permit requirements under examination by the EU Commission*

A case submitted to the Swedish Solvit Centre involved a Swedish travel agency that intended to market its services online, including the arrangement of golfing trips to Sweden for Irish consumers. The company fulfilled all Swedish requirements for the provision of such services, including the obligation to establish a travel guarantee fund as specified by the Legal, Financial and Administrative Services Agency (Kammarkollegiet); the amount of which is adjusted on an annual basis, with due consideration to operational emphasis and scope.

The Swedish company faced three requirements from the Irish authorities which the Solvit Centre, on closer analysis, assessed as possibly being in breach of the Services Directive.<sup>8</sup> These were:

- The requirement of an Irish licence to run such operations.
- The requirement that a company must have a minimum capital requirement of EUR 25,000.
- The requirement that a deposit be submitted amounting to the equivalent of the estimated turnover during the validity period of the licence.

The Irish authority involved considered that it was necessary for the company to comply with all these requirements in order to protect consumer interests. The Swedish Solvit Centre did not agree, stating that the permit and travel guarantee requirements were already fulfilled in accordance with Swedish rules. Solvit did not succeed in convincing the Irish authorities, which is why the Commission has now taken up the issue with Ireland.

### 3.2 Establishment requirements for the registration of top-level domain names

#### **Example 5**

**Barrier:** *Establishment requirement in order to acquire a local top-level domain name*

**Country:** *Germany, Finland, Estonia and Norway*

**Status:** *Unresolved*

When a customer searches for goods or services online using a search engine, local content is ranked higher than foreign content in each individual country. This means that companies registered under a local domain name (e.g. ".se" in Sweden) will be more visible and, as a result, receive more hits than companies with foreign top-level domains. In the long run, this could mean a competitive advantage for companies with local top-level domains compared with companies registered in other countries. Consequently, it is clearly in the interest of a company trading via the Internet in another Member State to register its website under a local top-level domain name.

However, in a number of Member States the authorities responsible are imposing establishment or representation requirements in order to be able to acquire a local top-level domain. Solvit has received reports relating to this problem from companies that export to Germany, Estonia and Finland.<sup>9</sup> The companies we contacted during the study have also experienced the same problem when selling in Norway.

In the Finnish and German cases, establishment requirements were justified by the need to secure that the holder of the domain name would follow up national legislation and regulations. In Estonia, the authorities identified a risk of domain grabbing,



i.e. attractive domain names being bought up by foreign investors and then resold to the companies wishing to use them. As there is no EU legislation in this field, Estonia referred to the Internet Corporation for Assigned Names and Numbers (ICANN). According to ICANN's recommendations, conflicts relating to top-level domain names are resolved by awarding priority to local connections. Estonia, however, applies these recommendations in a preventative manner (i.e. before a conflict has actually occurred) with regard to top-level domain names.

If a company wishes to market its products via the Internet in another Member State, this produces a competitive disadvantage as local companies receive more advertising space and are easier for the consumer to find. If the company is then forced to establish itself in the host country, this will inevitably result in additional costs.

No solution has been found in any of the countries involved as they do not admit that the situation is discriminatory. As far as the Board is aware, this issue has not been taken up by the EU Commission.

### 3.3 Requirements for the physical storage of customer details in Poland

#### **Example 6**

**Barrier:** Requirement for local storage of customer database

**Country:** Poland

**Status:** After intervention by the EU Commission, this requirement relating to customer databases no longer applies and they may be stored in other EU countries

A Swedish company contacted by the Board mentioned the previous Polish requirement that a customer database must be physically located in Poland. The aim of this requirement was to

guarantee the protection of personal details, which could be undermined if this information were transferred to countries where the protection level was not as high as it was in Poland. According to information received, Polish law required that the transfer of personal details from Poland to another country could only take place if the protection level there was the equivalent of that provided by Poland.

This meant that foreign e-commerce companies with Polish customers could be required to have some sort of physical presence in Poland. The company in question was forced to locate its server in Poland.

However, it is our understanding that this problem has now been resolved after intervention by the EU Commission. The Commission stated that this requirement was discriminatory and in breach of EU law. Poland was therefore forced to amend the requirement which now applies only to the transfer of data to countries outside the EEA area. Foreign e-commerce companies are consequently no longer forced to locate their servers in Poland in order to comply with Polish law, it is sufficient if these servers are located in one of the EEA countries.

## 4. Barriers linked to sales conditions

When a company in Sweden makes its product available via its website on the Internet, this product is theoretically accessible to all consumers in all Member States. If companies do not, at some stage of the purchasing process, exclude certain countries from its sales operation, this product may also be encompassed by consumer and sales law in all Member States.

Below are two examples that illustrate how national consumer regulations (Section 4.1) and certain sales regulatory requirements, here requirements regarding sales periods in France (Section 4.2) can prevent cross-border trade for online companies.

### 4.1 Consumer protection legislation – a fragmented body of regulations

#### **Example 7**

**Barrier:** *Different consumer protection-related requirements in different EU countries*

**Country:** *All EU countries*

**Status:** *A new EU directive that requires the same regulations within all EU Member States is in the pipeline*

For retail traders in Europe, considerable uncertainty exists with regard to the national rules that apply to e-commerce with other EU countries. Most companies interviewed consider this to be a major problem. An additional burden is imposed on companies when they have to identify relevant national rules in advance and adapt offers to each country's legislation. This gives rise to a complicated, expensive and unpredictable corporate climate for those enterprises considering selling their goods and services in other countries. Imposing different requirements on e-commerce companies in different countries may constitute a trade barrier according to EU law. However, these barriers can often be justified on the grounds of protection of legitimate interests and thereby escape the general EU law ban.

This problem primarily applies to differences in consumer legislation, for example rules regarding the right to cancel a purchase, guarantees, the right

to return goods, dispute settlement and information to consumers. Consumer protection legislation has been partially harmonised at EU level via a number of EU directives. However, these form only a minimum harmonisation level which leads to fragmented bodies of regulations within the EU.

For example, it is stated in the Distance Sales Directive of 1997 that the period for cancelling a purchase for all distance contracts must be at least seven working days.<sup>10</sup> However, in the implementation of this directive, different EU countries have chosen different durations: 15 days in Slovenia and Malta, 14 days in ten other EU countries (including Sweden, Finland and Denmark) and between 7 and 10 working days in the other EU countries (including France, the UK and Poland).<sup>11</sup>

The companies that the Board has contacted have chosen different strategies to tackle the problem of a fragmented regulatory framework. Some companies have chosen not to examine the relevant rules for the other EU countries and have instead designed their contracts in accordance with the Swedish rules. The risk is that their agreements may be declared invalid if they are in breach of local consumer protection rules. Another company invested several hundred thousand SEK to conduct an analysis of the rules applicable in a single country. In most cases small-scale e-commerce companies do not possess the resources to study the rules that exist in other EU countries. In these cases, legal uncertainties mean that suppliers refrain from selling their products or services across borders and choose to exclude a number of European countries from their sales operations.

In this context it should be noted that, in 2008, the Commission made a proposal for a Consumer Protection Directive.<sup>12</sup> The idea behind the proposal was that existing consumer protection directives would be merged and upgraded from a minimum harmonisation to a full harmonisation of consumer protection, i.e. the same rules would apply in all 27 EU countries. As far as the Board is aware, after two years of negotiations, the Council and the European Parliament have agreed on a compromise solution in which certain parts of consumer protection would be fully harmonised.<sup>13</sup> The final text should be adopted in spring 2011. The Board will monitor whether this process will correct the problems discussed here.



## 4.2 Periods of special sales offers in France also apply to foreign e-traders

### **Example 8**

**Barrier:** *A ban on offering special sales offers outside legally determined sales periods*

**Country:** *France*

**Status:** *Unresolved*

One of the e-commerce companies that the Board talked to alerted us to a practical risk with regard to the pricing of company products when selling to consumers in other EU countries.

In France, the periods when a trader may legally hold a sale/reduce prices are strictly regulated. There are two “sales periods”, each of five weeks’ duration, one in the winter and one in the summer. The exact dates of these periods are determined by the local authorities and vary depending on the county (departement) the company is located in. In addition to these two fixed periods there are two moveable periods, each of two weeks’ duration. In order to hold a sale during these periods, however, compa-

nies must report their intention in advance to their local authority. The same applies to online companies as to companies with physical stores. Consequently, companies that, from Sweden, make their products available to French consumers via their websites must also comply with these rules and are obliged to report their plans to hold sales to the relevant French authorities. It is not unreasonable to suppose that most small and medium-sized enterprises do not have an insight into this type of rule.

A company that holds a sale/reduces prices outside the legally stipulated periods or without first reporting its intention to the authorities may be fined up to EUR 15,000. Marketing requirements with an attendant risk of hefty fines form one major reason why small and medium-sized enterprises are not able to risk allowing online sales to other Member States without first carrying out a thorough legal analysis of the regulations applicable in the host country. This obviously generates considerable additional costs for companies.

As far as the Board is aware, however, no such sanction has yet been imposed on a foreign e-commerce company. This may explain why the EU Commission has taken no action on this issue.

## 5. Intellectual property barriers

Intellectual property rights are usually regulated nationally. For example, most copyright owners are represented by the collective royalty-collection organisation in the country of their establishment. Licences for the use of a protected work are often issued for a limited geographical area. In addition, it is often the case that a brand is registered nationally, which consequently provides it protection in one EU country but not in the other Member States.

In this report, the Board has identified a number of structural intellectual property barriers that arise when goods and services are supplied via the Internet. Commercial users provide various services that are based on making copyright-protected material accessible to consumers. Several examples relevant to this report discuss the provision of online systems for the delivery of music and video services (Sections 5.1–5.3). When a product is protected by intellectual property rights in one Member State, but not in all, there is also a risk of trademark infringement which causes problems for the exporting companies (Section 5.4).

It should be noted that the barriers identified in this section may often be justified according to EU law; with reference to the protection of legitimate interest, in these cases the protection of intellectual property rights.

### 5.1 Residence requirement for the online purchase on iTunes

#### **Example 9**

**Barrier:** *Downloading of music is limited geographically*

**Country:** *All EU countries*

**Status:** *Unresolved*

One consequence of the fragmented market for digital content, e.g. music and films, is that consumers are not free to buy online content from service providers in other Member States. This means that commercial users lose potential customers.

Content that is offered for downloading by various company websites is local to every Member State in which the company is established, as these companies use different websites with different ranges of products for the different Member States. To be able to buy and download music, the consumer must therefore be in possession of an IP number from the Member State linked to the rele-

vant website. In order to pay, the consumer must use a domestic payment card.

The Board's attention was drawn to a case where a Swede who moved to Belgium could not use his Swedish credit card to pay for access to the Belgian iTunes, but neither could he access the Swedish iTunes from his Belgian computer. When this type of situation occurs, it is easy to see that this constitutes a barrier for consumers.

The problem may also be regarded from a company perspective. For the company, a legal insecurity may arise regarding the risk of participating in a copyright infringement action, as licence rights have only been obtained for each individual member country. This results in the company playing it safe and refraining from providing the service in order to avoid copyright infringement.

### 5.2 A fragmented market for downloading films

#### **Example 10**

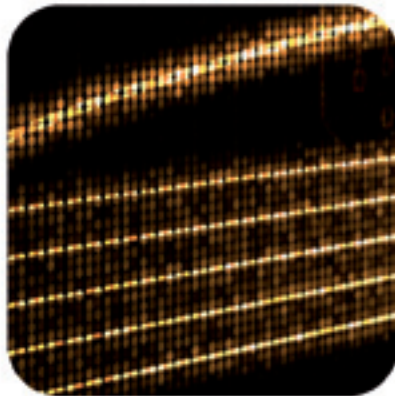
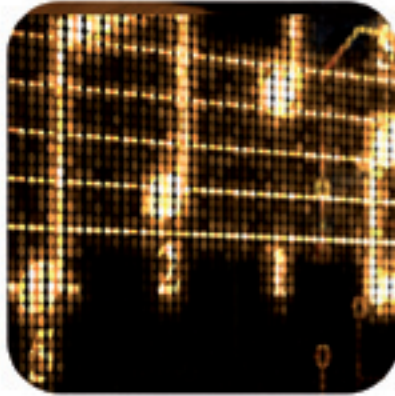
**Barrier:** *Difficulties in obtaining licences for the sales of downloaded films*

**Country:** *All EU countries*

**Status:** *Unresolved*

In this report, the Board has identified an example of a barrier that may occur in connection with the digitalisation of film content. The companies we interviewed, whose operations include the sales of films through downloading, experienced a problem with regard to territorial rights, which is very similar to that experienced by businesses in the music field. Companies that run this sort of operation have an interest in digitalising a range of films that are already in existence in order to be able to offer their content on the Internet. In order to do this, permission from the copyright holders is necessary. The problem of territorial rights results in difficulties in showing foreign films nationally and local films to foreign customers online.

It is often difficult to locate the relevant copyright holders, as there may be a number of investors who hold rights in addition to directors, writers etc., for each individual film. Companies regard this process as complicated within the borders of Sweden, and as impossible for them to achieve in other Member States.



Identifying and concluding relevant territorial licence agreements with the relevant copyright holders in another Member State is currently a financial impossibility. One company the Board interviewed instead established an agreement with an American film company providing territorial rights in the Nordic countries. The fact that American companies are able to offer large-scale packaged agreements means that, in principle, only American films are distributed digitally. This is a considerable disadvantage, not only for the companies that work with these operations but also for the European film industry.

### 5.3 Virtual showrooms limited geographically

#### **Example 11**

**Barrier:** *Requirements for the acquisition of national licence rights for the use of music on online trading platforms*

**Country:** *All EU countries*

**Status:** *Unresolved*

One example of a barrier for commercial users the Board identified during this study looks at a Swedish fashion company that uses music when providing a fashion show application on its website (known as a showroom). The company had obtained licence rights within the Nordic countries but not outside. This may lead to copyright problems for the company when users outside the Nordic countries listen to this music.

Consequently, the company has been forced to adapt its website and close down the showroom function to non-Nordic countries.

## 6. Barriers to payment

Payment for products purchased via the Internet generally occurs in a different manner to purchases in a physical store. If Internet commerce is to be able to attain its full potential, it is also necessary that customers feel confident and secure with regard to these new forms of payment. In many Member States, approved means of payment are regulated in order to safeguard the provision of secure payments. These rules must, however, also be put in relation to the problems that they generate for companies. With regard to this issue, the Board has been informed of a number of problems regarding possibilities and incentives to receive payment via the Internet.

These problems relate to payments using various international payment cards (Section 6.1), as well as new, specific solutions that have been invented for the digital market, such as e-invoices (Section 6.2), third-party payment companies (Section 6.3) and VAT representatives (Section 6.4). The report also takes up the Belgian ban on demands for advance payment or customer card numbers during the right of cancellation period, which was the subject of an EU Court ruling two years ago (Section 6.5).

### 6.1 Danish card regulation hampers payment for cross-border e-commerce

#### **Example 12**

**Barrier:** Establishment requirement for the use of a domestic payment card

**Country:** Denmark

**Status:** The EU Commission has taken up this issue with Denmark

In Denmark, the Danish Dankort holds, in principle, a monopoly position on the domestic card market, as 85% of Danes use Dankort to make their Internet purchases. If a Swedish company is to use Dankort for the payment of goods, a Danish personal identification number (CPR) is necessary, which in practice means that the company must be established in Denmark.

The Danish “lov om visse betalingsmidler” (Act for certain payment means) allows banks to take out a charge for an international payment card

issued in Denmark of between 0.3% to 0.75% of the purchase price. Consequently, the Danes are unwilling to pay with, or even obtain, a card other than the Dankort, which levies no charges according to the law. An international payment card issued in another country may incur charges of up to 5.75% of the purchase price.

Companies selling good/services to Denmark are therefore unable to offer this more advantageous form of payment and companies that sell from Denmark must also add an extra charge for foreign payments, which means that this Danish legislation may be regarded as both an import and an export restriction. As the consumer purchasing via the Internet is not free to pay by cash, these restrictions are even greater in the digital market.

Many of the companies interviewed regarded the Dankort as an almost insurmountable barrier – in many cases this was the actual reason why they did not sell to Denmark. In cases where companies had decided to sell to Danish customers, they regarded the Dankort as a Danish establishment requirement. The Commission has now initiated infringement proceedings against Denmark on this issue.<sup>14</sup>

### 6.2 Problems with the use of Swedish e-invoices in Germany

#### **Example 13**

**Barrier:** Requirements for the use of local e-signatures for payment by e-invoice

**Country:** Germany

**Status:** Unclear whether an amendment to the VAT Directive 2010 will resolve this problem

Through Solvit and other sources, the Board has had its attention drawn to problems relating to the mutual recognition of e-signatures in different EU countries, which has resulted in difficulties for companies when using e-invoices for cross-border commerce. For an e-invoice to be valid, most Member States require some type of e-signature to ensure that the information in the invoice has not been altered during transmission. In several cases, recognition of e-signatures has been limited to countries providing their own national solutions.

A Solvit case involved a Swedish company that supplied e-invoice solutions to multinational com-



panies.<sup>15</sup> Requirements imposed on e-signatures do, however, vary from Member State to Member State.

These requirements may range from pure security terms to demands that the signature software is compatible with a standard used in the country. If the Swedish company is to be able to use and sell its e-invoice solution in Germany, it is necessary that the German requirements for the e-signature on the invoice are fulfilled.

The Swedish company undertook and paid for a Manufacturer's Declaration Process in Germany and was able to have the software for the e-signature approved by the German authority BNA (Bundesnetzagentur). However, this approval was later withdrawn by the German authority with reference to the fact that the company was not established in Germany. The Swedish company then felt it had no other choice than to register a subsidiary company in Germany, as it feared that a conflict would harm its relationship with the German authority on which it was dependent.

In June 2010 amendments were adopted to the VAT Directive in respect of invoicing rules with the aim of ensuring that electronic and hard-copy invoices were treated equally and to forbid Member States from imposing requirements for e-signatures on e-invoicing. However, it is too early to draw any real conclusions as to whether the amendment of the directive really will solve this problem.<sup>16</sup>

Another problem noted by the Board concerns the invoicing of public agencies in Denmark (see below under Section 7.1). The Board has also, in a recent study, undertaken a more detailed analysis of the various problems connected to the use of e-invoices for cross-border trade.<sup>17</sup>

### 6.3 Money laundering legislation imposes an additional administrative burden on cross-border trade

#### **Example 14**

**Barrier:** *More complicated ID checks of customers during e-commerce transactions*

**Country:** *All EU countries*

**Status:** *Unresolved*

Because companies have to keep one step ahead regarding the increased range of goods and services available via the Internet, companies who have developed a niche in securing payment solutions between buyers and sellers have also increased in number. This form of certified service often manages the transfer of relatively small amounts of money. In this manner the seller can ascertain whether the buyer has paid and the purchaser has a chance to verify the goods before payment is completed. This form of payment considerably decreases the risk of fraud and both the buyer and the seller are able to feel secure.

However, the payment companies interviewed have encountered problems with regard to the application of money laundering legislation. Since the EU Directive on Money Laundering<sup>18</sup> was implemented into Swedish law, there are more severe measures in place in order to combat money laundering, including tougher requirements for ID checks in business relations where the customer is not physically present, which is always the case for purchases via the Internet.

When a payment occurs within Sweden's borders there is a standardised procedure and register to use, however in the case of a foreign payment, the buyer must submit a copy of ID documents etc., which is often carried out by ordinary mail. According to one payment service company interviewed, the methods available for the verification of foreign customers are disproportionately and unnecessarily time-consuming, as the majority of payments involved are for relatively small amounts. The company had, on several occasions, lost foreign customers who felt that it was far too difficult and time-consuming to transfer small amounts of money.

## 6.4 Barriers to the registration of a VAT representative in Italy

### **Example 15**

**Barrier:** *Requirements for in-country establishment for e-registration of a VAT representative*

**Country:** *Italy*

**Status:** *Unresolved*

One case brought to the Board's attention via Solvit involved a barrier to the registration of a VAT representative in Italy.<sup>19</sup>

According to the EU directive on the establishment of detailed rules for reimbursement to the new VAT Directive,<sup>20</sup> a taxable person who is not established in the refunding Member State may submit a refund application electronically to the Member State where he/she is established via an electronic portal in his/her home country.

In one example, a German accountant filled in and submitted the refund applications to the relevant authorities on behalf of his clients. Following Italy's launching of its electronic portal Fisconline/Entratel in accordance with the EU directive, such registration is however only possible for Italian representatives. The German accountant is therefore no longer able to act on behalf of his Italian clients.

Multinational accounting companies are therefore prevented from submitting VAT refund applications for their Italian clients and are therefore denied access to the Italian market.

## 6.5 Belgian constraints on advance payment negatively affect e-commerce companies

### **Example 16**

**Barrier:** *Ban on requiring advance payment or customer card numbers during the right of cancellation of sale period*

**Country:** *Belgium*

**Status:** *Ban lifted by the EU Court with regard to customer card numbers but remains for advance payment*

As already noted, payment opportunities for companies that sell their goods over the Internet are not the same as those that exist for companies that have a physical store. When payments by card are hampered by national legislation, this generally impacts Internet traders far more seriously than traditional traders.

Some of these national payment barriers have been examined by the European Court, e.g. in the *Gysbrechts* case<sup>21</sup> which concerned a Belgian company selling dietary supplements online. One of its customers, a resident in France, refused to pay the company, resulting in bad debt, in addition the company experienced problems with the Belgian authorities. According to the Belgian law on consumer protection, advance payment is not permitted until the right of cancellation period (seven working days) has expired. As an extension of this rule, the Belgian authorities forbade companies from requiring the customer's card number which was regarded as a form of payment in advance. Not being able to use the client's card number meant that the use of debit cards as a means of payment was rendered useless for the company.

The Court found that the Belgian ban on demanding payment in advance or the customer's card numbers before the expiry of the right of cancellation period did in fact constitute an export barrier. According to the Court such a ban generally impacts more seriously on cross-border trade directly with the consumer, and especially for online sales. As direct sales of this type via the Internet are generally relatively small amounts, it would be difficult for companies to obtain payment from a consumer in another Member State if the purchaser refuses to pay for any reason.

The ban on requiring payment in advance, however, was deemed by the Court to be justified by consumer protection considerations. However, the ban on requiring card numbers was considered disproportionate and therefore in breach of the EU rules on free movement of goods.



## 7. Barriers linked to e-government

The Board's report also shows the barriers set by the public authorities in the provision of e-government services to companies. Those services were designed to streamline administration procedures and basically making permits, registration or reporting easier. However, in several cases it appears that these systems have been built up, focussing on the facilitation of contacts for companies that are already established in the host country. Member States have often not taken into account cross-border trade in their systems.

Below we discuss the barriers to invoicing Danish authorities (Section 7.1), various establishment requirements for the registration of medical devices in Italy and radio equipment in Spain (Sections 7.2 and 7.3) plus the requirement for membership of a Spanish organisation in order to be able to submit online tax returns (Section 7.4).

### 7.1 Barrier to invoicing public authorities in Denmark

#### **Example 17**

**Barrier:** *Discriminatory system for the scanning of e-invoices*

**Country:** *Denmark*

**Status:** *Unresolved*

One of the Solvit cases handled by the Board in this field deals with the e-invoicing of Danish authorities.<sup>22</sup>

In Denmark, the Danish authorities are able to receive electronic invoices. If a foreign company uses paper invoices they may be submitted via a scanning centre, although this generates additional costs for these companies. For Danish companies there is an invoice solution that is free of charge, NemHandel. However, in order to gain access to this a Danish corporate or personal ID number is required.

This means that having a physical presence in Denmark is a competitive advantage and foreign operators are disadvantaged as the Danish authorities require businesses to have a physical presence in Denmark in order to be able to use the free of charge alternative.

Foreign operators are disadvantaged in, for example, public procurements. We have been in contact with companies that have lost customers

when the authorities refused to undertake the additional administrative burden that would follow after conducting business with companies that were not connected to NemHandel.

In Denmark, Økonomistyrelsen and IT/Telestyrelsen are the authorities that are jointly responsible for this system and they regard it as an internal Danish system with apparently no intention of improving accessibility for foreign companies. It is worth noting here that the invoicing of Danish authorities does not require e-invoicing (hard-copy invoices still work), however the Swedish companies interviewed claim that their Danish customers have increasingly adopted the Danish electronic invoicing system and are therefore reluctant to accept hard-copy invoices.

### 7.2 Barrier to the registration of medical devices in Italy

#### **Example 18**

**Barrier:** *Establishment requirements for the e-registration of medical devices*

**Country:** *Italy*

**Status:** *Requirements withdrawn after discussions with the EU Commission*

Via Solvit, French companies have made complaints about difficulties in registering medical devices in Italy, which is a prerequisite for the sale of such products there.<sup>23</sup> The Italian Health Ministry's regulations require online registration of these products via the use of a smartcard, i.e. the e-signature encryption is located on an external device and not on the user's computer.

The problem was that the Italian authorities refused access to these smartcards for foreign companies on the grounds that these were not granted to companies outside Italy. It was therefore impossible for the French company to register and, as a result, sell its products in the Italian market.

After the EU Commission initiated an infringement proceeding against Italy on this issue, the Italian authority changed its position and now accepts other external e-signature solutions if they are certified in accordance with the E-signature Directive.<sup>24</sup>



### 7.3 Barriers to the reporting of radio equipment in Spain

#### **Example 19**

**Barrier:** *Establishment requirements for e-registration of releases onto the radio equipment market*

**Country:** *Spain*

**Status:** *Partially resolved, the company was offered an alternative registration channel (fax)*

The Solvit database shows other problems linked to the use of e-signatures issued in other EU countries. One case involved Spanish requirements for an e-signature when reporting a radio equipment release.<sup>25</sup>

According to the Radio Equipment Directive<sup>26</sup> a manufacturer of radio equipment is obliged to report its intention to release products onto the market if these products utilise a radio spectrum that is not fully harmonised within the EU. This report must be submitted to the authority that is responsible for spectrum matters in each Member State in which the manufacturer wishes to market the product before it is permitted to release it onto the market. In Spain, electronic reports were only accepted with a Spanish-approved e-signature.

When an Italian manufacturer of radio equipment attempted to make its report to the relevant authority in Spain in order to release its products onto the market, the company was told that its e-signature, which was approved in Italy, was not among the list of approved signatures. The company was consequently refused entry into the Spanish market.

After Solvit had taken up this problem, the Spanish authorities admitted that there was nothing to stop the Italian manufacturer from submitting its report via fax. The company is, however, still excluded from the simplification of its administrative burden that the use of the registration portal would have provided.

### 7.4 Barriers to accountants' submissions of tax returns on behalf of their clients via the Internet

#### **Example 20**

**Barrier:** *Membership requirements of a domestic organisation in order to submit online tax returns*

**Country:** *Spain*

**Status:** *Unresolved*

International accounting companies have, via Solvit, made complaints involving barriers to the submission of tax returns on behalf of their clients via the Internet. In one case a British tax agency wished to submit a tax return on behalf of a Spanish customer through the Spanish tax authority's Internet portal. In order to gain access to this portal the agency was forced to become a member of a professional association that had concluded a cooperation agreement with the Spanish tax authorities. Despite the fact that the agency possessed a licence in the UK, its application for membership was rejected by the organisation.

As a result, the UK company was excluded from the Spanish market. In this case, the problem was resolved by the company being provided with information on the different associations available. For a foreign company, however, this means a continuation of the barrier as they are forced to approach all the different associations until they are allowed to join one of them. According to the Services Directive, the UK licence should have been sufficient.

The problem was not resolved via Solvit, instead the company was offered alternative registration solution in that they were given information on the different associations that had entered into agreements with the Spanish authorities. However, foreign accounting companies must continue to approach these associations and identify one that is willing to accept them as a member.

## 8. Conclusions

The Internet is an efficient, effective tool for reaching out to a greater number of cross-border customers than is possible using more traditional sales methods. As mentioned in the beginning of this report there is, however, currently no integrated digital internal market, there are 27 different online markets. There may be several explanations for this fragmentation – one being the legal barriers that affect e-commerce companies during cross-border trade and that are illustrated in the Board's report.

This report raises further questions regarding the types of barriers that affect e-commerce companies, how they affect behaviour patterns and how they can be resolved. These issues are discussed below (Sections 8.1–8.3) and we conclude with reflections on the importance of e-commerce for the future of the internal market (Section 8.4).

### 8.1 Specific barriers to e-commerce?

This report has shown different types of legal barriers that affect e-commerce companies. Certain barriers are specific to e-commerce, for example requirements linked to IT (top-level domain names, e-signatures). The effects of other barriers, such as establishment requirements, are not limited to e-traders but often impact more severely on them as most have no physical presence in the host country – in contrast to traditional trading which involves a physical presence in targeted countries (through distributors, franchising or subsidiary companies/branches).

By offering goods for sale on their websites, e-commerce companies are automatically faced with a great number of different sets of regulations in different countries – regulations that are difficult to identify without a local connection. Local establishment requirements are especially counterproductive for these companies as they undermine the entire point of Internet trade, which is to reach out to distance customers directly.

### 8.2 Who is to blame for the refusal to deliver to other EU countries?

In 2009, the Commission carried out an extensive report of the barriers experienced by EU consumers with regard to cross-border trade.<sup>27</sup> This report showed that one third of consumers felt that e-commerce companies often refused to sell or deliver goods and services to countries other than

the one they were established in. According to the Commission: *“More often than not, foreign online traders will refuse to accept orders from consumers living in another country”* (p.7). In that respect the Commission refers to the Services Directive's new regulation which is aiming to *“put an end to discrimination by traders refusing to sell to or treating consumers differently on the basis of their nationality or place of residence”* (p.8).

There are, of course, cases where the market has been divided up between different agents/dealerships through the application of, for example, exclusive distribution agreements or where suppliers forbid their agents to sell their goods via the Internet. In many cases these restraints on competition can already be assessed in relation to the EU competition rules.<sup>28</sup>

The Board's report shows, however, that this refusal to supply is, in many cases, justified by the fact that e-traders experience cross-border trade as problematic. There is greater risk that problems will be more difficult and expensive to solve when they occur. The mere risk of incurring higher costs linked to e-commerce with other countries may lead to an increase in the number of companies declining to sell to the countries in question.

### 8.3 How can e-commerce barriers be resolved?

It is possible to remove many of the barriers taken up in this report, for example establishment requirements, with the help of the existing EU rules on free movement. In principle, according to these rules, all barriers must be abolished unless they can be justified by reference to the protection of legitimate interests. However, it is seldom easy for an e-commerce company to question national rules that may be in breach of EU law. The process necessary to claim proper rights is often time and resource consuming and, especially in the case of small and medium-sized enterprises, not worth the effort.

In the opinion of the Board, no new EU rules are necessary in order to remove these barriers. Improved knowledge of existing EU rules by the national authorities and better monitoring of how these rules are applied should be sufficient to abolish these barriers in a smooth, efficient fashion. The Board contributes to these activities through Solvit, by drawing attention to the actual barriers experienced by companies, and by increasing the Swedish authorities' awareness levels on the correct application of EU law.



In certain cases, where the barriers can be justified by the protection of a legitimate interest however, further harmonisation measures may be necessary.

This involves, for example, local establishment requirements for local top-level domain names where the risk of abuse and fraud is used as a justification or requirements based on consumer protection and intellectual property rights.

The need of EU harmonisation should be analysed in the light of the new EU initiative on the realisation of an internal digital market. In the Commission Communication on an EU Digital Agenda, a number of proposals are presented regarding the issues raised by this report. As mentioned above, in Section 4.1, a proposed new framework directive on consumer protection is on its way.

In the opinion of the Board, the other proposals regarding e-commerce are formulated too generally and lack a detailed content. For example, with regard to the barriers related to e-signatures, it is not, according to the E-signature Directive, permitted for a Member State to insist that an enterprise uses a local e-signature. The Commission is, however, aware that EU countries do not always recognise each other's e-signatures, which may lead to discrimination. In its Digital Agenda, the Commission states its intention to make practical proposals for the solution of this problem. Pending these proposals, it is difficult for the Board to assess whether they would adequately address the issues raised in this report.

Another example of a proposal taken up by the EU Commission deals with online content and barriers linked to intellectual property rights. In its Digital Agenda the Commission mentioned the possibility to introduce a pan-European licence; however this proposal disappeared from the Commission Communication on the "Single Market Act" that was published a few months later. Even if this

point is missing, the Board feels that practical measures to facilitate trade in copyright-protected products are necessary.

It should also be noted that although the EU is at the beginning of this legislative work, e-commerce is a dynamic market that may force rapid changes in its regulation. In contrast to more mature markets, competitive conditions on the digital market are constantly changing. New, innovative concepts, operators and products are emerging and driving development forwards. The expansion of the market may place considerable pressure on EU legislators to accelerate the realisation of a digital internal market.

## 8.4 The importance of e-commerce for the future of the EU's internal market

Thanks to the Internet, companies gain greater opportunities to reach out to new customers in other EU countries. Many of the barriers that affect physical trading were removed through the application of the new information and communication technology. For example, physical distance from the customer is not as important to e-commerce as it is to traditional commerce, which should provide e-commerce with a significant competitive advantage. However, these opportunities are currently not being fully exploited. As a result the digital internal market possesses considerable development potential.

The realisation of this market may therefore be regarded as a test of how well the EU's internal market works. If the EU succeeds in abolishing the legal barriers currently affecting e-commerce and uniting the 27 national online markets into one all-encompassing EU e-commerce market, there are good preconditions for securing the functioning of the physical internal market as well.

# Notes

- 1 The Commission Communication on the Digital Agenda for Europe, COM (2010) 245 final (26 August 2010), p.4.
- 2 The Commission's report on Cross-border E-commerce within the EU, SEC(2009) 283 final (5 March 2009), the Commission's Communication on Cross-border E-commerce between Companies and Consumers in the EU, COM (2009) 557 final (22 October 2009), Copenhagen Economics "The Economic Impact of a European Digital Single Market" (March 2010) and the Commission Communication on a Digital Agenda.
- 3 Eurobarometer 298, 2008 (see study mentioned above from Copenhagen Economics, p.26).
- 4 Solvit is an informal network under the supervision of the Commission that works to remove trade barriers that are primarily caused by the erroneous application of the EU law by a national government authority.
- 5 Case C-322/01 *Deutscher Apothekerverband*.
- 6 Case C-108/09 *Ker-Optika*.
- 7 Case C-258/08 *Ladbrokes*.
- 8 Directive 2006/123/EC (12 December 2006) on Services in the Internal Market.
- 9 SOLVIT 38921/07/SE, 44023/08/LV and 1009-2008.
- 10 Article 6.1 in Directive 97/7/EC (20 May 1997) on the Protection of Consumers in Respect of Distance Contracts.
- 11 The Commission's comparative table of consumer protection levels within the EU, October 2009 (see [http://ec.europa.eu/consum-ers/rights/docs/comparative\\_table\\_en.pdf](http://ec.europa.eu/consum-ers/rights/docs/comparative_table_en.pdf)).
- 12 COM (2008) 614 final (8 October 2008).
- 13 See the Commission's statement in MEMO/11/61 (1 February 2011) and MEMO/11/39 (24 January 2011).
- 14 See <http://politiken.dk/tjek/penge/dinepenge/1045488/gebyrer-paa-vej-paa-card-som-mastercard-og-visa-elec-tron/>. The Dankort problem was also the subject of a Solvit case (43802/08/SE).
- 15 Reg. no. 313-0988-2007.
- 16 See the Board of Trade study entitled "e-invoices in cross-border trade" (2010:4) for a more extensive study on the anticipated effects of these changes.
- 17 See the Board of Trade study entitled "e-invoices in cross-border trade" (2010:4).
- 18 Directive 2005/60/EC (26 October 2005) on the Prevention of the Use of the Financial System for the Purpose of Money-Laundering and Terrorist Financing.
- 19 Solvit case 91863/10/DE.
- 20 Directive 2008/9/EC (12 February 2008) laying down detailed rules for the refund of Value Added Tax provided for in Directive 2006/112/EC to taxable persons not established in the Member State of refund but established in another Member State, Article 7.
- 21 Case C-205/07 *Gysbrechts*.
- 22 Reg. no. 319-0958-2009.
- 23 Solvit case 51182/08/FR.
- 24 Directive 1999/93/EC (13 December 1999) on a Community Framework for Electronic Signatures.
- 25 Solvit case 69292/09/IT.
- 26 Directive 1999/5/EC (9 March 1999) on Radio Equipment and Telecommunications Terminal Equipment and the Mutual Recognition of their Conformity.
- 27 The Commission Communication on Cross-border e-commerce between companies and consumers in the EU.
- 28 Articles 101 and 102 in the EU Treaty. See also the EU Commission's Guidelines on Vertical Restraints (19 May 2010), items 52–54 cover various restraints on the use of the Internet as a sales method.





**Kommerskollegium**  
National Board of Trade

Box 6803, S-113 86 Stockholm, Sweden  
Phone +46 8 690 48 00 Fax +46 8 30 67 59  
E-mail [registrator@kommers.se](mailto:registrator@kommers.se) [www.kommers.se](http://www.kommers.se)