

# Position Paper

## A digital single market for retailers



## Introduction

**A completely integrated digital single market is high on the wish list of Detailhandel Nederland. It can help retailers to utilise the economic potential of omni-channel business and is particularly good for consumers as well. This requires a European digital policy that eliminates trade barriers, drastically simplifies cross-border VAT declarations, makes no distinction between offline and online selling, does not cause higher administrative burdens and ensures a level playing field where all European players, large and small, are able to develop their online activities.**

### *Urgent need to tackle physical trade barriers*

Digital technology will drive a larger sales market and extra growth, greater transparency in prices and terms and conditions, and more competition. But first it will be necessary to eliminate the existing physical trade barriers. Examples of trade barriers include different requirements for language, labelling and packaging. Differences in consumer rights attached to products according to member state, for example concerning warranty terms, confuse consumers and cause an unlevel playing field and inexplicable differences for enterprises that operate internationally. In the case of a cross-border online purchase, the retailer still has to contend with physical borders when a purchase is sent to a customer. If the supplier and the customer are located in different countries, the transaction is hindered by the numerous different national rules that continue to fragment the European single market. Retailers who want to do business online across borders often find it complicated to satisfy all the different national rules, concerning such matters as consumer protection, labelling and packaging requirements, and VAT. The upshot is that companies still have to go to a great deal of trouble to sell their products or services across borders. Tackling these obstacles will boost growth, and in turn increase online activities.

Manufacturers should be obliged to supply all legally required product information in a structured way in all EU languages. At present it costs Dutch web shops a lot of money to create all Dutch language content for the Dutch market. Similarly, German web shops have to invest considerable sums of money to create all German content for the German market and so on. It has to be borne in mind that some online providers have almost overcome the issue of language differences by developing advanced translation programs. However, this is so expensive that only a few providers can afford it.

### *Freedom of enterprise*

A good relationship between retailer and customer is built on trust, particularly in an online world where there is no physical contact between the two parties. The confidence that both parties will fulfil their obligations is essential. The customer pays, the retailer meets the customer's expectations in terms of the price, quality and delivery of the product. A retailer will expand its business to other European Union countries if he sees potential in doing so. A retailer who has put together a business model aimed at a national market but is uncertain about what service he can offer a foreign customer or whether expansion of his business to other countries will stand any chance of success and be fraud-proof, will not do so.

As regards the approach to geo-blocking, the European Commission needs to be cautious when taking policy measures that restrict freedom of enterprise. In principle the retailer must be free to choose his business model, including choosing the markets he wants to serve. The European Commission should focus on taking measures that help to unblock cross-border trade. This means a policy focused on tackling various national trade barriers. It also means that the entrepreneur must retain a certain degree of freedom to make the choices that best suit his or her business model and that contribute in the most efficient way to societal goals, such as the recycling of waste. Retailers are the ones best able to estimate how products can be returned and recycled most efficiently, how the consumer can best be kept informed, and which products are suitable for a particular national market.

### **Same warranty terms for similar products Europe-wide**

An important trade barrier is the existence of different statutory warranty terms in Europe. The only thing that will really help to get companies across borders is complete harmonisation of the rules applicable to consumer purchases. All other proposals, such as selling under a home option (where foreign online customers purchase under the same terms and conditions as national customers) are stopgap remedies that do not provide any long-term solutions, neither for retailers nor for consumers.

Therefore, Detailhandel Nederland supports the law proposed by the European Commission for levelling out European rules for online purchases. The most appropriate warranty term is two years, with a term of six months for reversal of the burden of proof, as is already the case in the vast majority of member states. The extension of the reversal of the burden of proof from six months to two years, i.e. equal to the warranty term, must however exhibit a relationship and proportionality with the nature of the product, the kind of defect and 'normal use' of the product.

Detailhandel Nederland points to the need for special treatment of the sale of animals. Animals are not products and merit their own position. This applies both to pets and to animals that serve as animal feed (such as crickets for amphibians and reptiles, and flies, daphnia and mosquito larvae for aquarium fish). Given the nature of these goods, an extension of the reversal of burden of proof from six months to two years is unrealistic for the sale of live animals and aquatic plants.

Detailhandel Nederland shares the sense of urgency: these proposals need to be implemented as soon as possible. But harmonisation must really and definitively make the market more uniform. It is extremely important not to create new legal differences according to the nature of the product (tangible goods or digital goods), or the sales channel in which the product was purchased (online or a physical shop).

Seventy percent of online turnover comes from omni-channel retailers, i.e. retailers who sell both online and offline. Therefore, the existence of different warranty terms for the same products that are sold online and offline is impracticable and undesirable. Throughout the entire purchase process, consumers are making more and more use of different online and offline purchase channels (a consumer who sees something in an offline shop will order it online and then collect it offline). In some sectors, there are also a lot of hybrid purchases of durables, such as a floor that is ordered or reordered partly offline and partly online. It is incomprehensible for the consumer and impracticable for a retailer for different parts of the floor to be covered by different warranty terms.

Besides obscurity concerning the purchase channel, there is also obscurity about when a product falls under the rules for digital content (intangible goods), and when a product falls under the rules for tangible goods. It is important to have a clear definition, because an unlimited warranty term applies to the sale of digital content. Under the present proposals, CDs and DVDs will for example be placed under the rules for digital content. Products with pre-installed software will be treated as tangible goods. Tangible goods on to which digital content is loaded after purchase will be regarded as digital content. This gives rise to more questions about where the dividing line is between intangible goods and their carriers. The best solution is to adhere to the narrow definition of digital content laid down in existing Dutch legislation.

### *Remedies*

Remedies for defective products represent an important element of the rules applicable to consumer purchases. The choice of remedy, i.e. repair or replacement, should be left to the enterprise, without introducing a fixed sequence. More and more often, also in the setting of the circular economy, the emphasis is being placed on the repair of products. This is not always the most sustainable or desirable option. For example, it is sometimes disproportionately expensive to get products repaired, for instance if they were manufactured outside the EU and the right parts or expertise are unavailable in the Netherlands. From the point of view of the consumer, too, repair is not always desirable due to the duration of repair. An example is a customer who returns a kitchen tap and cannot wait two weeks for it to be repaired. For some products, replacement is then the best option. The choice of remedies depends greatly on the kind of product involved.

At present there is a duty in the Netherlands to report defects to the seller. Under the European proposals, there is no such notification duty. So a long time may lapse between a product becoming defective and the retailer learning about it. By then it can be difficult to find out what caused the defect. A notification duty of two months needs to be included in the proposals. After all, a notification can be made nowadays by means of a simple e-mail. The proposed European law also needs to clarify that damage caused to goods by (incorrect) installation cannot be charged to the retailer.

If customers return a non-conforming product to the store, the retailer will go back to the supplier. In the Netherlands, it is legally defined that the retailer may recover the amount he has to compensate the consumer (both for resolving the non-conformity of the product and the consequential damages) from his supplier. The supplier must not include any clause in his terms and conditions or warranties which limits such liability. In the terms and conditions of suppliers, however, it is seen that the liability of the supplier is limited to the price of the product. While this is not allowed in the Netherlands, this still happens in the rest of the EU. To create certainty and avoid unreasonable costs for the retailer, it is important that the proposed warranty term of two years also applies to retailers and their suppliers.

### *Returning and recycling*

Flexibility is also required for returns. Products purchased online that are defective may not always be returned by post for reasons of hygiene or safety. Examples include electronic devices with lithium-ion batteries, which can catch fire in a postal sorting centre. For online sales there must also be possibilities for handing in discarded electronic products. In accordance with the WEEE Directive, the distributor must offer the consumer one or more possibilities (take-back at delivery, later collection by the distributor, sending to an address or business reply number). However, these possibilities will encounter practical and financial problems.

An extra possibility is to point out to consumers that they can hand in products in a nationwide network of take-back points and dedicated shops. These take-back points are often combined with parcel collection points. This avoids an extra, unnecessary waste stream and reduces the number of kilometres driving around with waste. It is not possible to offer this option at present, because it fails to satisfy the WEEE Directive.

### Urgent need to simplify cross-border VAT procedures

Enterprises with cross-border ambitions are being deterred by the major differences in VAT systems and the accompanying administrative burdens. Besides simplification of declaration procedures, the VAT laws within the EU need to be made the same as far as possible. For online retailers who deliver in multiple countries, it is nothing short of a nightmare to identify all the VAT procedures. It can take months simply to obtain a VAT number.

Subsequently, the submission of declarations does not occur digitally in all countries by a long way and sometimes a retailer receives forms in the national language that he must then fill in and send back. Similarly, the frequency of VAT declarations differs according to the member state concerned (quarterly, half-yearly or monthly). What's more, member states have a variety of thresholds below which companies may remit VAT in their own country. We are of the opinion that these threshold amounts should be made the same.

In its 2016 work programme, the European Commission has withdrawn a proposal for standardising the VAT declaration form in all EU languages (2013/0343/CNS) because agreement could not be reached among the member states. Like the European Commission, Detailhandel Nederland wants to pursue a simplification, harmonisation and substantial easing of the burden of VAT returns. Therefore, Detailhandel Nederland advocates continuation of the pursuit of a common declaration form.

A rule in force since 1 January 2015 is that VAT must be remitted in and according to the rules of the country of the consumer. For companies this is enormously complicated administratively. These burdens must be reduced by making declarations as simple as possible. Among other things, this can be accomplished by having a single system for electronic registration and payment: the Mini-One-Stop-Shop (MOSS). MOSS is an instrument that must be usable by as many companies as possible. An expansion of this service, to include the sale of tangible goods, would be highly welcome.

By levying VAT in the country of the consumer, the company must also satisfy the rules of that country. Therefore, different tax authorities may perform inspections. This again leads to significant administrative burdens.

Detailhandel Nederland supports the European Commission's proposal to apply the principle of 'home country control', where the seller only needs to satisfy the administrative rules of the country where he is established, and will be audited only by the national revenue service.

Detailhandel Nederland also supports the European Commission's proposal to abolish the VAT exemption for third countries that supply products directly to

consumers (no VAT needs to be charged if the amount is below €22). The existence of this rule disturbs the level playing field for the sale of products that fall below this limit, and it should be abolished as quickly as possible.

### More efficient and affordable parcel deliveries

High delivery costs pose a problem according to 62% of companies that sell online. The cross-border delivery of parcels is significantly more expensive than inland delivery – even over the same distance. To stimulate competition in this market, Detailhandel Nederland believes there should be greater transparency in the prices and terms and conditions of both inland and cross-border parcel delivery. For such time as there is not a completely liberalised and competitive market for cross-border deliveries, companies will limit deliveries of this kind to avoid incurring disproportional costs. These are missed opportunities for consumer and retailer alike.

### Tackling unjustified geo-blocking

The European Commission wants to tackle unjustified geo-blocking. Geo-blocking occurs when sellers refuse consumers access to their website based on their location, reroute customers to a local or national online shop, or prevent customers from ordering products or services on the website. Detailhandel Nederland is pressing for a European single market in which products and services are available in all European countries to consumers and enterprises, regardless of their origin.

Due to the existence of market fragmentation, however, it is not always possible to apply the same terms and conditions when serving national and international customers, and this gives rise to geo-blocking. This is regularly the result of restrictions imposed by suppliers. We as retailers do not want to be caught between an EU that wants to oblige retailers to eliminate barriers for trade between member states, and suppliers that want to keep in place selective distribution agreements. If a manufacturer does not want certain products to be sold in country A, it will no longer supply them to a retailer that sells in country B as well as in country A, thus making it impossible for the retailer to sell the product in both countries.

Detailhandel Nederland is pursuing the single market and the elimination of existing barriers so to enable optimum utilisation of digital technology. In other words, geo-unblocking instead of geo-blocking is the central goal for Detailhandel Nederland.

### Rerouting

One of the most frequently occurring instances of geo-blocking is the rerouting of customers to local websites. This often occurs for the consumer's own convenience. For example, websites that sell toys or products for children must

offer them in the local language, enabling children to understand the contents. Consumer preferences also differ according to place: people in Greece have different fashion preferences to people in Finland, for example. Differences between countries in such matters as clearance sale periods also obstruct trade. Retailers that want to sell in several countries must make complex IT alterations on the website. Particularly for smaller (less automated) online players, this is a difficult and relatively costly process. Companies must be able to respond to this via their websites.

This means that consumers must be given the choice to visit other websites (with the risk that they will be unable to complete their purchases of all products). Detailhandel Nederland considers it a logical consequence of the single market to have greater transparency in prices and terms and conditions. Transparency can lead to price levelling, but even then price differences will remain. After all, enterprises must still contend with different cost structures in each country, due for example to different personnel costs, VAT rates, warehouse costs or differences in the local distribution infrastructure.

### *Delivery of products*

In some cases a foreign customer is unable to complete an online purchase due to his or her location. Companies make this choice because they will otherwise encounter disproportional burdens and costs due to cross-border trade barriers. Sellers must take back a product at no cost in the case of non-conformance, which can result in high costs in the case of long distances. Particularly for SMEs, these barriers represent a major burden. Selling to foreign customers will often involve no problems, just as in physical shops, but delivery across the border gives rise to difficulties. A precondition for online sales to foreign customers who personally arrange delivery should be the successful standardising of the rules for consumer purchases.

### *Unblocking cross-border selling*

There are reasons for not delivering certain products or services to all European consumers in all European member states. This might be because of problems with long-distance or cross-border deliveries, differences in national standards that make products suitable only for the home market, the high costs for the retailer for using internationally accepted payment systems, restrictions imposed by supplier agreements, the risk of fraud and so on.

It is logical for retailers to clearly state on their website in which areas and under which terms and conditions they can deliver their products. There are considerations concerning product safety and national technical differences as a result of which certain products can be sold only in the retailer's home market: examples include electrical devices that do not fit every power outlet (or voltage) in the EU. If the European Commission wants to stimulate cross-border sales, adequate solutions need to be found to address these problems.

Obligations for a retailer to disclose reasons for selling or not selling in certain countries must be kept to a minimum. After all, the most relevant information for a customer is not why product X is cheaper in country A than it is in country B, but whether it is cheaper there and whether he can purchase the product reliably.

### *Means of payment*

Retailers must retain freedom to choose means of payment. After all, there is a great difference in the costs between national debit cards and internationally accepted means of payment (such as credit cards or PayPal).

Choosing certain payment possibilities is thus a consequence of business expenses and may not be regarded as a factual form of geo-blocking.

Detailhandel Nederland urges minimum intervention in the market by means of new legal rules. In many cases, the objective reasons for geo-blocking have already been defined in existing legislation, e.g. in the Consumer Rights Directive and the Services Directive. What's more, there is a great likelihood that intervention will disregard the underlying reasons of companies to make a distinction between customers.

### *E-commerce and territorial delivery limitations*

The discussions about curtailing unjustified geo-blocking are closely related to discussions about tackling geographic market sharing by branded manufacturers. Retailers see that branded manufacturers deliberately fragment the single market and oblige retailers to purchase their stocks from the national sites, even if prices in foreign sites are lower. A retailer with outlets in several member states that wants to purchase products centrally and organise its own stocking of its shops, must not be subjected to discrimination by branded manufacturers based on its location and be forced to purchase locally in every member state. Sales to the customer (who arranges its own distribution) must not be hindered in B2B relations either.

### *A level playing field for all companies that do business in Europe*

Besides tackling internal trade barriers (which in the online domain are largely the same as in the offline domain), a level playing field must be guaranteed. This means that the rules must be the same, regardless of which sales channel is used (online or offline), and must be framed in a way that allows all companies to apply and implement them in the same way. Everybody must have equal opportunities to sell online across borders. The access of new entrants to online markets must be assured so that matters such as innovation and ample choice for the consumer are always safeguarded.

The level playing field in the European Union must be monitored. Within the European Union there is a high level of consumer protection and high-quality products: products are required to satisfy stringent requirements concerning

safety, environment-friendliness and health. However, a growing number of non-conforming products can be found in the European market. These include products that consumers import directly online from third countries (sometimes without realising from which country they are ordering a product). Many consumers are unaware of the risks that this creates. Companies are also worried, because non-conforming products represent unfair competition. Additionally, such products can damage consumer trust.

Both companies and consumers in the European Union attach great importance to the monitoring of the level playing field in the EU. All products must be placed on the market in conformity with European regulations.

#### *Uniform enforcement is a precondition*

A digital single market can be successful only if accompanied by uniform enforcement in relation to companies that sell products in the EU, regardless of where the companies come from. Products sold from third countries directly to European consumers must be required to meet the same stringent European product and safety requirements as products purchased within the European market. After all, consumer trust is crucial to the development of online sales channels. Detailhandel Nederland calls on the European Commission and member states to act robustly against producers and importers of non-conforming products and to make this a priority of the competent authorities.

#### **Need for better information**

Until such time as the differences in regulations between European member states have been addressed as fully as possible, clear and accurate information will be indispensable for enterprises that want to act in conformity with cross-border practices. This can be accomplished by means of an up-to-date online platform on which there is a list of all essential, applicable legislation for each country. This needs to be written in clear, comprehensible language and to be available in a simple manner in all official languages of the EU, so that traders and consumers alike are easily able to find and apply the rules.

**Detailhandel Nederland advocates:**

- continue tackling physical trade barriers (such as differences in labelling and packaging requirements, consumer information and return systems)
- make it obligatory for manufacturers to provide all legally required product information in a structured way and in all EU languages
- create clarity as soon as possible about enforcement in relation to online platforms from third countries
- implement policy uniformly at European and national level and enforce uniformly companies that sell products in the EU
- introduce as soon as possible a single European statutory warranty term for similar products, regardless of the sales channel
- put in place a workable arrangement for the sale of live animals and aquatic plants
- ensure greater transparency in the prices and terms of condition of both domestic and cross-border parcel delivery
- tackle geographic market sharing by branded manufacturers
- provide an up-to-date online platform containing a list of all essential, applicable legislation for online sales for each country
- make a clear distinction in the definition between tangible and intangible goods
- minimise intervention in the market by means of new legal rules in relation to the obligation to sell
- ensure freedom for enterprises in offering online means of payment, which because of different cost structures substantially affect the online business model

**Simplifying VAT:**

- extend the Mini-One-Stop-Shop (MOSS) for the cross-border sale of tangible goods by companies to private individuals
- abolish the VAT threshold exemption on the import of goods (from outside the EU)
- press ahead on further harmonisation of VAT rates at European level
- ensure maximum European standardisation of VAT declarations, for example the process for obtaining a VAT number, the manner of filing returns (digital), and the time of filing
- introduce a common European threshold amount for enterprises



**For more information:**

Detailhandel Nederland represents 100,000 retailers with 700,000 employees. Each year these retailers record turnover of approximately €96 billion.

**Detailhandel Nederland**

Overgoo 13  
2266 JZ Leidschendam  
The Netherlands  
+31 70 320 2345  
[www.detailhandel.nl](http://www.detailhandel.nl)

**Detailhandel Nederland in Brussels**

Margriet Keijzer  
[margriet.keijzer@detailhandel.nl](mailto:margriet.keijzer@detailhandel.nl)  
Nerviërslaan 85  
1040 Brussels  
Belgium  
+32 2 732 4941

**Detailhandel Nederland**

© March 2016

