

Brussels, 24 January 2001

OPINION
of the
Economic and Social Committee
on
The effects of e-commerce on the single market (SMO)
(own-initiative opinion)

On 2 March 2000 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an Opinion on the following subject:

The effects of e-commerce on the single market
(Single Market Observatory).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 January 2001. The rapporteur was **Mr Glatz**.

At its 378th plenary session (meeting of 24 January 2001) the Economic and Social Committee adopted the following opinion with 79 votes in favour and one abstention.

1. Summary and conclusions

- E-commerce currently accounts for a small proportion of overall trade. This is particularly true of business-to-consumer (B2C) trade. It is more significant in business-to-business (B2B) trade.
- E-commerce is, however, growing extremely fast.
- Consumers are hesitant to use e-commerce. The reason for this is lack of the opportunity or knowledge to gain access and lack of confidence with regard to the protection of privacy and security of payments.
- Another obstacle is the regulatory framework, which is in some cases incoherent and often entirely lacking, as well as the legal situation of suppliers which in some areas is fragmentary - particularly in view of the convergence of telecommunications and media and the corresponding infrastructure. A consistent framework cannot therefore be said to exist.
- Greater account also needs to be taken of these new trends in competition policy.

1.1 For these reasons a package of measures is needed laying down the basic conditions for a functioning internal market in e-commerce. It should be ensured that measures are, above all, adopted at global level.

1.2 If this does not happen, Europe will be missing out on opportunities for economic and social development and it will not be possible to narrow the gap between Europe and the USA in this area.

1.3 In summary, therefore, the Committee makes the following recommendations:

- Support for a constructive dialogue between consumers and manufacturers/distributors. Consumer organisations should be comprehensively consulted, in order to create a climate of confidence.

- Promotion of strategies to flank and stimulate the new technologies with the aim of providing access for as many people as possible. Special account should be taken of the problems of the less affluent sections of the population, as well as those of the elderly, for example.
- Establishment of a European and worldwide legal framework to ensure affordable and transparent access to e-commerce, offering the consumer security and guarantees. The measures adopted by the Commission for the reorganisation of the telecommunications sector (package of directives of 12 July 2000¹) are an important initiative.
- Establishment of a legal framework for areas which are excluded from the scope of the e-commerce directive. These would include a framework for alternative disputes settlement procedures, questions relating to unfair marketing, extension of the scope of the distance selling directive, drawing up of a distance selling directive covering financial services, and criteria for self-regulation initiatives.
- The Committee believes that SMEs will have an important role to play in e-commerce and that it must be made possible for them too to make use of the opportunities.
- Suppliers should offer consumers the opportunity to reach out-of-court settlements before legal proceedings are instituted. It is also important for consumers to be able to enforce their rights in their place of residence.
- In order to promote out-of-court settlement procedures and quality labels whilst avoiding obstacles to the internal market, comparable standards and principles need to be developed and applied.
- E-commerce poses new challenges for competition policy. The new developments should be observed with vigilance, particularly mergers, portals and network infrastructure.
- Development of safe payments systems and reduction of cost of cross-border money transfers.
- Reduction of existing tax obstacles and distortions. European firms' competitive disadvantage vis à vis third-country firms should be eliminated.
- The Community must assign the highest priority to data protection. The Commission should encourage the Member States to press ahead with implementation of data protection. Data protection law needs to be adapted to the new technological and economic context, in order to guarantee data protection for all forms of modern communication.

2. **Importance of e-commerce**

As the technological basis for e-commerce, the Internet has undergone rapid development. The importance of the Internet varies greatly from one region to another, however. Thus

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COM(2000) 384, COM(2000) 385, COM(2000) 386, COM(2000) 392, COM(2000) 393, COM(2000) 394, COM(2000) 407.

the OECD states, particularly the United States, dominate as regards both the number of servers and the number of users.

2.1 The European Commission² believes that e-commerce in Europe will have grown from \$17 billion at the end of 1999 to approximately \$360 billion in 2003.

2.2 The most important area is **business-to-business** (B2B) commerce. Estimates coincide in suggesting that it accounts for between 70 and 90% of total e-commerce.

2.3 **Business-to-consumer** (B2C) e-commerce at present accounts for an insignificant proportion of business volumes. In Europe e-commerce currently accounts for less than 1% of total final consumer transactions, i.e. less than traditional mail order business. For 2001/2002 it is estimated that e-commerce will account for 5% of the total in the OECD 7, and for 2002/2005 the corresponding forecast is 15%.

2.4 In some **sectors**, such as financial services or software, however, e-commerce already enjoys far greater than average importance. This shows that e-commerce will be able to play a major role in intangible products in particular.

2.5 E-commerce should be understood above all as a means of selling both digital and non-digital goods and services, particularly over the Internet. Other forms of selling are on the point of being introduced however, e.g. **interactive TV** (t-commerce) and **mobile commerce** (m-commerce). The latter in particular will gain in prominence with the introduction of UMTS technology.

2.6 **Europe** is lagging behind the **USA** with regard to both use of the Internet and the importance of e-commerce. There are various reasons for this: a single language, a single currency, lower telephone charges, more risk capital. Europe is, however, the leader in mobile communications and can be expected to develop this lead further with UMTS. The introduction of the **euro** will also boost the importance of e-commerce in Europe - even for European states which do not participate in the euro.

3. **Importance of e-commerce for the internal market and its operators (employers, consumers and workers)**

3.1 **Internal market**

3.1.1 E-commerce will influence the internal market in many ways. The purchase of goods and services across national frontiers will intensify. New markets are emerging. Consumers have a wider choice. E-commerce will boost the importance of the internal market. E-commerce can offer

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Communication from the Commission - Strategies for jobs in the Information Society (COM(2000) 48 final).

development opportunities for rural areas too. The structure of markets is changing. In particular, electronic commerce in financial services can be expected to take on much greater importance. Banks will increasingly face competition from non-banks offering financial services.

3.1.2 Mutual recognition, which is regarded as one of the most important instruments for ensuring free movement of goods in the internal market, will gain further in importance as a result of e-commerce.

3.1.3 The distribution of tangible products will, however, grow in importance only if logistical problems are satisfactorily solved. The increase in the electronic trade in physical products will, however, also lead to an increase in traffic flows. It is difficult to say at present whether the change from physical despatch to downloading of certain products (e.g. music media) will cancel out these effects. The Commission is urged to initiate studies on the subject. The Committee highlights this problem and points to the need to find appropriate transport solutions.

3.1.4 Some intermediary business will decline. Manufacturers and suppliers of services will sell directly to the consumer. At the same time, however, the lack of clarity of Internet supply will create a new need for intermediaries. New forms and areas will develop, particularly in logistics, financing and information services. Forms of distribution will also need to be more closely geared to the needs and the - in some cases greatly changed - lifestyles of consumers.

3.2 **Businesses**

For companies use of the Internet means the opening up of new areas for business, the development of new products, services and forms of selling

3.2.1 The Internet also facilitates marketing, particularly focused marketing. Advertising and transaction costs can be reduced.

3.2.2 The Internet can be expected to produce cost reductions which, with properly functioning markets, will lead to lower prices, with the corresponding effect on prosperity. The reasons put forward for these cost reductions are as follows:

- disappearance of traditional middle men (disintermediation)
- lower communication costs (telephone, computer etc.)
- less physical infrastructure (business premises etc.)
- transfer of costs to customers (customers obtain information themselves)
- lower cost of distributing digital goods.

3.2.3 On the other hand, there will be new, additional costs which should not be underestimated - particularly public relations.

3.2.4 The new electronic media can be expected to have a greater impact on business-to-business transactions than on transactions with the final consumer. This is illustrated by the respective

turnovers. The greater part of e-commerce is business-to-business and its use in sub-contracting and purchases of parts and materials is becoming increasingly common.

3.2.5 It is vital for SMEs to make use of this form of business. However, they are at present often not in a position to exploit these opportunities. It is particularly important for SMEs to be offered effective advisory services which will enable them to seize the opportunities and hold their own in this way of doing business or respond to the requirements of main contractors and other bigger enterprises to adopt new ways of operating.

3.2.6 For SMEs the additional PR costs may, as a result of the specific features and structures of the Internet, exceed the technology-related cost savings. Barriers to adoption are thus greater in B2C trade than in B2B. And thus also the risk.

3.2.7 Through the Internet small and medium-sized enterprises can have improved access to markets, as a result of lower communication costs. The technology also makes it easier for suppliers to gather information on customers and their purchasing behaviour. This makes it possible to target customers more precisely without the usual scatter effect of advertising.

3.2.8 The Internet is therefore often seen as an opportunity for SMEs, in fact particularly for SMEs. E-commerce will force firms to take a greater interest in the specific skills of their employees in this area. Succeeding in e-commerce will be a challenge for SMEs and will require changes in logistics and human resource development. Joint ventures and platforms can reduce this risk.

3.3 **Effect on consumers**

Against a background of globalisation of the economy, e-commerce offers the consumer an extraordinary opportunity to have access to all markets when choosing products hitherto unheard of - and to benefit from attractive prices or buy products which would not be available on national markets.

3.3.1 Asymmetric information is a feature of retail markets in general and of the Internet in particular. It is usually very expensive for the consumer to obtain information on all suppliers. Confidence therefore plays a major role in these markets. There is therefore likely to be a greater intermediary role in future for providers of advisory and search services.

3.3.2 Lower costs will be reflected in lower prices for the final consumer only if competition works. Empirical studies show, however, that the Internet is in principle no more competitive than other areas. The reason for this is a high degree of market concentration (familiarity). The market is highly transparent in theory but much less so in practice. This demonstrates the need for a framework - particularly a competition-related and legal framework - enabling the consumer actually to exploit possible advantages.

3.3.3 The Committee believes that firms, governments and the European Community should think about new forms of incentive to encourage simplification in terms of systems and machine

translation of languages, promote the use of e-commerce among less affluent sections of the population and make the Internet an instrument used not only for consumption, but increasingly for education and information, an instrument which is of use to all.

3.3.4 The Internet is being used not only as a vehicle for e-commerce, but also increasingly for training and information. It offers employment opportunities and helps to satisfy the demand for greater knowledge. The Committee stresses that education policy needs to react to this changed demand, in schools, adult education and other areas such as the mass media. Investment is needed in hardware and software and in the construction of networks. There is also a need for training of teachers. Training in this field will be an important precondition for Europe's future competitiveness.

3.4 **Workers**

3.4.1 EU citizens will be increasingly affected by e-commerce in their capacity as workers. The structural shifts which can be expected to result from the forecast take-off of e-commerce will create a demand for new skills in the labour market. These forecast structural shifts must be met by appropriate training and skills initiatives and other measures. This will by no means involve only highly skilled workers. Basic and further training will need to be tailored to such workers.

3.4.2 The Committee points out that education policy will need to react to these changed demands both at school and adult further education level. Education policy-making today will determine Europe's competitiveness in the future.

3.4.3 The development of partly virtual business structures will encourage the emergence of new employment relationships. Not least, teleworking will grow in importance as a result of the rise of e-commerce. The social partners should look at these trends in terms of their impact on employers and workers. Particular care will need to be taken over compliance with the protective provisions of labour law and over health and safety in the workplace. Trade union access to companies and representation by works councils must be guaranteed.

3.4.4 E-commerce should create new opportunities for workers. Opportunities for worker participation will increase if there is a move from hierarchical structures towards networks of small, project-orientated units working relatively autonomously. It will be necessary to develop and promote these opportunities for workers.

3.4.5 In its Opinion on the White Paper on Commerce the Committee expressed views on initial and further training issues. The results are to some extent also relevant to e-commerce.

3.4.6 The rise of e-commerce also means increased worker mobility. Activities which were hitherto located in firms' administrative centres are being farmed out to places where workers are cheaper and social standards lower. In order to alleviate the increased pressure on Europe's workers, social rules are needed, at least at European level, to be agreed between the social partners, or else more far-reaching rules guaranteeing compliance with ILO standards for workers in all areas.

3.4.7 The Committee believes that, in drawing up a framework for e-commerce, it is important to strike a balance between the interests of suppliers, consumers and workers. The involvement of all three groups is essential for all aspects of e-commerce. Joint initiatives by the social partners are also extremely helpful in coping with structural change. The Committee also feels that the Commission should carry out a study of the (physical, psychological and economic) effects of e-commerce on workers.

4. Obstacles to the creation of an internal market in e-commerce and solutions

4.1 Clear legal and regulatory framework needed

E-commerce will be able to realise its potential only if there exists a reliable, transparent and predictable structural framework for businesses and consumers. The **Directive on electronic commerce** (2000/31/EC) established a legal framework for suppliers, making it possible for them to do business with customers in other Member States without having to apply the laws of those Member States. The directive provides for derogations in various areas, however. So, instead of ensuring a Single Market, e-commerce in the case of the retail sector may still be characterised by fragmentation of the EU into 15 different national markets thereby clearly restricting the potential for e-commerce in Europe. Thus, while fully understanding the situation of providers and the need to end fragmentation, the Committee feels that, as long as high-level harmonisation is lacking, an extremely responsible approach is called for here.

4.1.1 In many cases it is necessary for the supplier to be certain of the identity of the other party to a contract. In e-commerce it is also essential that the integrity of the data transmitted is guaranteed. **Electronic signatures** make this possible. The basic conditions were laid down in the **Directive on electronic signatures** (1999/93/EC). In practice, however, no use has so far been made of electronic signatures.

4.1.2 This e-commerce directive removes many of the obstacles to e-commerce for suppliers. And yet a consistent framework cannot yet be said to exist as a result of the inconsistencies which have arisen through the **convergence** of telecommunications technologies with each other and with the media. A new regulatory framework for communications infrastructure and related services should above all be aimed at promoting and underpinning in the long-term an open and competitive market for communications services.

4.1.2.1 The Commission's **Green Paper on Convergence** (COM(97) 623 final) has launched the discussion. In its **1999 Communications Review** (COM(1999) 539 final) the Commission proposes horizontal rules for communications infrastructure. In its opinion the Economic and Social Committee supported these initiatives and felt that the discussions should be accelerated in order to provide businesses and consumers with a safe and reliable framework. The Commission's July 2000 telecommunications reform package adopts an approach of this kind. In view of the convergence of telecommunications, media and information technology, there is to be a single legal framework for all transmission networks and services. The Committee is glad that with the new legal framework an effort

is being made to achieve greater coordination with general EU laws on competition and consumer protection.

4.1.3 A competition policy framework has been successfully established for telecommunications. Now the same path needs to be followed in other areas.

4.1.4 High initial investment (fixed costs) are a feature of the digital economy. The investment is often in intellectual property. Distribution costs, on the other hand, are very low. From the point of view of producers it is therefore understandable that considerable attention is paid to the protection of intellectual property, to **copyright**. In this context the Economic and Social Committee would point out that consumers' legitimate wishes and needs should not be neglected such as the opportunity to make copies for private use (e.g. recording of television programmes for later viewing). The Council has adopted the common position on patent law.

4.2 Confidence in e-commerce

Consumers are often hesitant about using the Internet to buy products and services because there is a lack of transparency with regard to product characteristics, possible additional costs, applicable law and jurisdiction. Consumers are unsure whether the products they wish to buy are free of defects, will be delivered on time, and whether they will be exchanged or refunded in the event of problems (especially defects or dissatisfaction) quickly, efficiently and fairly. Moreover, the technological systems are often not user-friendly.

4.2.1 Consumers are also concerned about fraud, lack of security, particularly of payments, and lack of protection of personal data.

4.2.2 Online shoppers will encounter situations which are unfamiliar from conventional shops and mail-order. When buying in a shop or ordering from a catalogue the consumer generally knows who he/she is dealing with. But Internet home pages are to be found which contain no information on the company. When making complaints about goods or services ordered it is therefore often difficult to locate the supplier, return products or where necessary inform the court of the address to which legal proceedings should be directed.

4.2.3 In many cases consumers' lack of confidence arises from a lack of understanding. It is incumbent on the Community, the Member States, firms and consumer organisations to make the necessary information available to consumers. In this way consumers will be enabled to make their own decisions.

4.2.4 If e-commerce is to develop, processes and transactions have to be simple and safe and the consumer must be able to resolve difficulties and disputes quickly, cheaply and effectively.

4.2.5 The EU has recognised that a secure framework is needed opening up to customers the many opportunities of e-commerce. Rules are needed covering minimum information on suppliers, prices, postage and packing costs, taxes, cancellation rights and the labelling of advertising matter.

4.2.6 Apart from numerous confidence-building measures via the establishment of legal conditions, the main rules are contained in Directive 97/7/EC on the protection of consumers in respect of distance contracts, which is already being implemented, and Directive 2000/31/EC on electronic commerce.

4.2.7 The network of protective provisions is incomplete, however. Thus, important areas of services are still excluded from major provisions of the distance selling directive (e.g. leisure services such as travel). In particular, no suitable legal framework exists for the distance selling of financial services.

4.2.8 In its Opinion (CES 458/1999) on the Proposal for a Directive concerning the distance marketing of consumer financial services (COM(1998) 468 final) the Committee pointed out that "The specific characteristics of financial services and their immaterial nature, combined with their acknowledged complexity and importance to consumers, provide justification not only for proposing special provisions which do more than simply echo the general provisions applicable to distance selling, but also for adopting a high level of consumer protection in the areas to be harmonised".

4.2.9 The universal application of the country of origin principle, as provided for in the e-commerce directive, could mean consumers being confronted with advertising practices or certain products (e.g. medicines) which they have so far not encountered. This could be a cause of uncertainty. The aim should therefore be to achieve a high level of harmonised standards in these areas.

4.2.10 The Committee therefore makes the following recommendations:

- The main provisions of the distance selling directive should be extended to other services and corresponding rules should be drawn up as soon as possible for the services in question.
- The decision on the proposal for the Directive on the distance selling of financial services should be accelerated. The main reason for delay is discussion in the Council of Ministers of the question of full harmonisation and possible derogations. As suggested in the Committee's opinion of April 1999, the deadline for final implementation should be set at 30 June 2001.
- The Directive on the distance selling of financial services should contain minimum requirements concerning information, a suitable cooling-off period, restrictions on certain forms of selling and a simple and effective system for refund.
- Framework rules are also needed covering areas excluded from the e-commerce directive. This would include a framework for alternative disputes-settlement procedures, questions of unfair marketing and criteria for self-regulation initiatives; such rules could form the basis for the establishment of "Eurocodes", e.g. in the area of marketing. In this way consumers would have more confidence in self-regulation initiatives.

- Suppliers should be liable for loss or the faulty transmission of data provided in connection with consumer transactions.

4.3 Codes of conduct and quality labels

4.3.1 **Codes of conduct** by which companies operate should help to boost consumer confidence in e-commerce. In order not to impede the internal market, comparable standards and principles should be drawn up, above all at Community level, with input from the consumer associations and industry. Bodies monitoring compliance with codes of conduct should be supported.

4.3.2 The award of **quality labels** to companies should be considered as a suitable instrument for enabling consumers to form a view of the quality and reliability of suppliers. The quality label should give consumers the confidence to make purchases over the Internet under customer-friendly conditions.

4.3.3 It must be ensured that criteria are set at a high level and that suppliers actually abide by them.

4.3.4 The Committee feels that the monitoring criteria and certification system should be developed with input from consumer organisations and industry representatives at international level, so that the quality label is as widely used and accepted as possible. National quality labels should act merely as a spur to this trend. A plethora of widely differing certificates would create confusion rather than clarity and impede the operation of the internal market.

4.4 Disputes settlement and enforcement of the law

4.4.1 When cross-border consumer transactions give rise to disputes between consumer and supplier, it makes more sense for both sides to reach a settlement **before** any legal proceedings commence. Structured management of complaints by the supplier has an important part to play here.

4.4.2 Secondly, fair and simple disputes settlement has an important part to play in cross-border consumer transactions. Another consideration affecting consumers' willingness to enter into cross-border transactions is the existence of a procedure for the enforcement of rights similar to that applicable in domestic transactions. Initiatives on **out-of-court settlement procedures** have an important contribution to make here.

4.4.3 The Committee therefore stresses the need for the Commission and the Member States rapidly to develop cross-border mechanisms for the settlement of consumer disputes. It must be ensured, however, that such procedures are freely chosen, i.e. that they are not a precondition for the conclusion of a contract and that the option of subsequent legal proceedings is not excluded.

4.4.4 Out-of-court settlement procedures should be of comparable quality throughout the Member States. This will serve the operation of the internal market, and only in this way can it be ensured that consumers actually make use of the procedures. It is therefore necessary to draw up

comparable standards and principles at European level. The Committee suggests that accreditation, licensing or supervisory structures be guaranteed to protect against abuses.

4.4.5 The Committee points out that a great many questions still need to be answered in this connection (law applicable to out-of-court settlement procedures, language of proceedings etc.).

4.4.6 However, the operation of disputes settlement procedures of this kind also depends on the consumer always having the opportunity to enforce his/her claims in court.

4.4.7 **Access to law** and a secure framework are major preconditions for the acceptance of e-commerce by consumers. In December 2000 the Council stipulated in the Regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters that consumers may bring an action in relation to cross-border electronic transactions, or have an action brought against them, at their place of residence. Further improvements in cross-border application of the law are needed however (serving of documents, seizure etc.).

4.4.8 While acknowledging the need for a high level of consumer protection, it is also essential to avoid the fragmentation of the market for electronic commerce in the EU by a plethora of national regulations and constraints on competition and innovation.

4.5 **Competition**

Market structures in the e-commerce sector are developing rapidly. "Lock-in" and network effects could rapidly lead to the development of oligopolistic or monopolistic structures. The time factor plays a greater role here than in other areas. This poses new challenges for competition policy. The new trends therefore need to be monitored carefully.

4.5.1 Competitive conditions need to be created at European level which make it possible for small Internet operators, which are generally receptive to the needs of users, to survive, thus ensuring balanced development of the sector.

4.5.2 The precondition for this is that there be a sufficient number of market participants at all levels and that they practise free competition. These levels include not only Internet service providers but also particularly Internet infrastructure suppliers.

4.5.3 In the process European competition policy must face up to new challenges:

- Products and services are often, thanks to the Internet, supplied via dual distribution systems: the virtual and the traditional market. It is becoming increasingly difficult to delineate the relevant market, and clear assessment criteria are needed, as is close cooperation with competition authorities on all continents.

- Information on prices, raw materials, quantities etc. is exchanged via B2B platforms. The competition authorities have the difficult task of establishing whether agreements restricting competition or illegal concerted practices are thereby coming about.
- As a result of the network effect and the enormous investment required, market participants in Internet business tend more to concentration and the formation of market-dominating positions than traditional markets. This is true not only of service providers but also particularly of suppliers of Internet infrastructure or content.
- Thus the Internet's network infrastructure is already globally dominated by only a few companies, which are involved in merger discussions. Moreover, these network infrastructures are concentrated on US networks, and a major part of trans-European Internet traffic is routed via the USA. Thus European consumers and firms are dependent on transatlantic links for security and reliability.
- Competition authorities must ensure that the group of market participants which lays down the industry standards for e-commerce does not abuse these for its own advantage or in this way achieve a dominant market position.
- The organisation and management of the Internet are of fundamental importance in this context. In the interests of European consumers and businesses the European Union must address the question of the extent to which European competition authorities can use their influence to bring about a competition-neutral organisation of the Internet.

4.6 Safe and cheap payment systems

4.6.1 Functioning, cheap and safe payments are an essential basis for the operation of an internal market in e-commerce. In a number of countries consumers often lack confidence in credit card payments, although European legislation has gone some way towards boosting confidence. Under the distance selling directive, credit card companies now carry the risk in the event of the fraudulent use of credit cards or credit card numbers.

4.6.2 Moreover, prepaid cards enable consumers to make payments anonymously. This opens up e-commerce to new groups of consumers (young people), to which it would otherwise be inaccessible for lack of the means of payment (credit cards).

4.6.3 The Committee's comments and recommendations:

- Suitable means of payment need to be developed for small transactions.
- The cost of cross-border bank transfers is too high. This was shown by the Commission survey of March 2000. Small, cross-border payments must be made cheaper as a matter of urgency and fees payable by the final consumer must be substantially cut.
- Rules applicable to smart cards are needed (data which may be stored).

- Secure standards for payment by credit card exist (SET) but are at present rarely offered by companies (partly because of the high costs involved).
- The Commission is called upon to adopt uniform rules on the burden of proof in the event of fraudulent use of credit cards and credit card numbers and on the criteria for reimbursement. Rules are also needed on the reimbursement of payments by card companies in the event that the terms of a contract have not been properly fulfilled by the supplier (non-delivery or faulty delivery).

4.7 Adaptation of the tax system

4.7.1 Cross-border electronic commerce is increasingly throwing existing tax hindrances and distortions into sharp relief. Competition between tax systems is intensifying. This is particularly true of VAT.

4.7.2 In its proposal for a Council Directive (COM(2000) 349 final) the Commission set out new rules on the taxation of indirect electronic commerce.

4.7.2.1 There is felt be no need for regulation in cases where private individuals buy goods over electronic networks but where the goods are delivered by conventional means. Such cases do not create any special problem with regard to turnover taxes.

4.7.2.2 New rules are planned covering the online delivery of digital products, particularly to the final consumer. Electronic deliveries are treated as provision of services. If the service is provided by a firm with its head office in a non-EU country for a customer resident in the Community, the transaction will be taxed in the EU.

4.7.3 The Committee feels that an internationally compatible government framework for e-commerce urgently needs to be established. The existing competitive disadvantage of European firms vis à vis third-country competitors needs to be eliminated. This need arises both from the danger of tax erosion to the detriment of government budgets as well as from the need to prevent damaging tax competition which could weaken the European Union's position in the world trading system. The Committee therefore welcomes the proposals submitted by the Commission for applying VAT to e-commerce. The Committee also feels that the tax arrangements applicable to e-commerce must not place conventional commerce at a disadvantage.

4.8 Access and access costs

4.8.1 The speed with which the use of electronic instruments for communication and business transactions grows depends in part on cost. In some countries rapid growth is impeded by the acquisition, access, connection and operating costs of the relevant devices, which are still too high as a proportion of an average family's budget. The danger of the polarisation of society (digital divide) must be countered.

4.8.2 Whether these dangers can be averted depends on a number of obstacles being overcome. These obstacles particularly affect groups which potentially could benefit greatly from the new technology and e-commerce: the elderly, the sick and the disabled.

4.8.3 European research still has a long way to go in relation to computer hardware and software development. Some obstacles, which have so far been insurmountable, such as use of the English language, which has a particularly strong deterrent effect in the Latin countries, could for example be eliminated. Rapid and reliable machine translation systems could solve the problem of incomprehensible contract clauses which threaten to ensnare many buyers.

4.8.4 **Access to infrastructure and services** is particularly important. In this context, the interconnection of networks is important for the development of competition and interoperability of services.

4.8.5 Rules on access and interconnection are a fundamental framework for the investment decisions of both new entrants to the market and existing market participants. A high degree of legal certainty is therefore extremely important in this area. In the light of the specific situation of the communications market, even market participants with no great market power also need to be regulated to some extent in order to ensure fair competition at all levels of the market. This applies in particular to the requirement for the negotiation of interconnection and access.

4.8.6 The Committee's recommendations:

- If the market does not guarantee access to infrastructure and services, political decisions are needed establishing the appropriate conditions.
- The Committee feels that a package of measures is needed to ensure affordable access to communications and e-commerce. This would include targeted promotion measures, telephone company services (such as leased equipment) and more competition over access to local networks.
- A proposal for a regulation has been presented by the European Commission which provides for the unbundling of access to customers. In this way more competition should be created in this area. It should be ensured, however, that this does not lead to problems or capacity shortages.
- The fact that the cost of leased lines is still relatively high makes measures urgently necessary - particularly at national level. If this is not successful, the competition rules will have to be applied extremely strictly at European level.
- In the light of technological developments and convergence between services the universal service concept needs to be reassessed to establish whether it meets current requirements. The Commission should therefore propose criteria for the extension of the concept of universal service in Community law and mechanisms for regular checks in the light of the dynamic and progressive character of the universal service concept. The Committee also feels that, if the definition and scope of universal service is enlarged, these should include fast Internet services.

4.9 Privacy and data protection

One reason why consumers have taken to e-commerce only hesitantly is the fear of Internet activities compromising their privacy. E-commerce leads to a vast quantity of data being collected and processed. Data paths are becoming traceable. Directive 1995/46/EC on the protection of personal data lays down a framework for suitable data protection and for the free movement of data within the EU.

4.9.1 In practice, however, data protection does not always work. The improper collection of data and the compilation of consumer profiles are commonplace. The right to protection of privacy must, however, not be infringed, and personal data must therefore be restricted to information which is absolutely necessary for transactions and for the companies concerned.

4.9.2 There is also considerable scope for infringement of privacy in connection with the use of "cookies" (to collect information on the habits of the user), the sending of which is a condition for access to many websites.

4.9.3 For this reason the Committee recommends that:

- The Community assign the highest priority to data protection.
- The Commission encourage the Member States to promote the application of data protection.
- The Commission promote initiatives to raise public awareness of this issue.
- Consumers be offered support in order to control this data flow.

- The data protection directive for the telecommunications sector needs to be adapted to new technological and economic circumstances in order to ensure that data protection extends to all forms of modern communications (from telephone conversations to communications in general, location data, rules restricting the use of data provided for marketing purposes; rules on electronic profiling).

Brussels, 24 January 2001.

The President
of the
Economic and Social Committee

The Secretary-General
of the
Economic and Social Committee

Göke Frerichs

Patrick Venturini
