

BA Legal Report

June 2015

Banking & Payment Systems

Council of Ministers adopts Interchange Regulation

In April, the Council adopted the final text of the Interchange Fee Regulation, to bring in caps on fees for debit and credit cards across the EU. The Regulation will finally become law 20 days after it is published in the Official Journal, which is expected shortly. Member states will then have 6 months from this date to ensure that the caps are fully in place.

[Cashless payments overtake the use of notes and coins](#)

Cashless payments have overtaken the use of notes and coins for the first time. The Payments Council said the use of cash by consumers, businesses and financial organisations fell to 48% of payments last year. Cash volumes are expected to fall by 30% over the next 10 years.

- **48%** of payments made by consumers, businesses and financial firms were in cash
- **34%** of consumer payments are expected to be in cash by 2024
- **4.4%** of adults “rarely” use cash at all
- **£67** is the average ATM withdrawal
- **1%** of consumer payments were made by cheque in 2014

Proportion of cash payments by sector in 2014

Petrol station: 24.5%

Electrical goods: 33.8%

Supermarkets: 43.8%

Bookshops: 45.5%

Travel and transport: 59%

Charity: 65.9%

Discount stores: 68%

Convenience stores: 78.5%

Pubs and clubs: 83.9%

Newsagents: 84.8%

Companies & Competition

A Digital Single Market for Europe: Commission sets out 16 initiatives to make it happen

The European Commission unveiled its detailed plans to create a [Digital Single Market](#), thereby delivering on one of its [top priorities](#).

At present, barriers online mean citizens miss out on goods and services: only 15% shop online from another EU country; Internet companies and start-ups cannot take full advantage of growth opportunities online: only 7% of SMEs sell cross-border (see [Factsheet](#) for more figures). Finally, businesses and governments are not fully benefitting from digital tools. The aim of the Digital Single Market is to tear down regulatory walls and finally move from 28 national markets to a single one.

The Digital Single Market Strategy includes a set of targeted actions to be delivered by the end of next year. It is built on three pillars: (1) better access for consumers and businesses to digital goods and services across Europe; (2) creating the right conditions and a level playing field for digital networks and innovative services to flourish; (3) maximising the growth potential of the digital economy.

Pillar I

The Commission proposals include:

- Rules to make cross-border e-commerce easier. This includes harmonised EU rules on contracts and consumer protection when you buy online: whether it is physical goods like shoes or furniture; or digital content like e-books or apps. Consumers are set to benefit from a wider range of rights and offers, while businesses will more easily sell to other EU countries.
- To enforce consumer rules more rapidly and consistently, by reviewing the Regulation on Consumer Protection Cooperation.
- More efficient and affordable parcel delivery. Currently 62% of companies trying to sell online say that too-high parcel delivery costs are a barrier.
- To end unjustified geo-blocking – a discriminatory practice used for commercial reasons, when online sellers either deny consumers access to a website based on their location, or re-route them to a local store with different prices.
- To identify potential competition concerns affecting European e-commerce markets. The Commission therefore launched an antitrust competition inquiry into the e-commerce sector in the European Union.
- A modern, more European copyright law: legislative proposals will follow before the end of 2015 to reduce the differences between national copyright regimes and allow for wider online access to works across the EU, including through further harmonisation measures.

- To reduce the administrative burden businesses face from different VAT regimes: so that sellers of physical goods to other countries also benefit from single electronic registration and payment; and with a common VAT threshold to help smaller start-ups selling online.

Pillar II

The Commission proposals include:

- Comprehensively analyse the role of online platforms (search engines, social media, app stores, etc.) in the market. This will cover issues such as the non-transparency of search results and of pricing policies, how they use the information they acquire, relationships between platforms and suppliers and the promotion of their own services to the disadvantage of competitors – to the extent these are not already covered by competition law. It will also look into how to best tackle illegal content on the Internet.
- Reinforce trust and security in digital services, notably concerning the handling of personal data. Building on the new EU data protection rules, due to be adopted by the end of 2015, the Commission will review the e-Privacy Directive.
- Propose a partnership with the industry on cybersecurity in the area of technologies and solutions for online network security.

Pillar III

The Commission proposals include:

- Propose a 'European free flow of data initiative' to promote the free movement of data in the European Union. The Commission will also launch a European Cloud initiative covering certification of cloud services, the switching of cloud service providers and a "research cloud".
- Define priorities for standards and interoperability.

For more information:

[Communication – A Digital Single Market Strategy for Europe](#)

[Staff Working Document – A Digital Single Market Strategy – Analysis and Evidence](#)

Factsheets:

[Questions and Answers on the Digital Single Market Strategy \(MEMO\)](#)

[Why we need a Digital Single Market](#)

[28 National Country Factsheets](#)

http://europa.eu/rapid/press-release_IP-15-4919_en.htm

[Statement by Vice-President Andrus Ansip at the press conference on the adoption of the Digital Single Market Strategy](#)

[Antitrust: Commission launches e-commerce sector inquiry](#)

The European Commission has today launched an antitrust competition inquiry into the e-commerce sector in the European Union. The inquiry, as announced by Commissioner Vestager in March, will allow the Commission to identify possible competition concerns affecting European e-commerce markets. It complements actions launched within the framework of the Digital Single Market Strategy.

The sector inquiry will focus particularly on potential barriers erected by companies to cross-border online trade in goods and services where e-commerce is most widespread such as electronics, clothing and shoes, as well as digital content. Knowledge gained through the sector inquiry will contribute to better enforcement of competition law in the e-commerce sector.

[Sector inquiry into e-commerce](#)

In the context of its [Digital Single Market strategy](#), the [Commission launched a sector inquiry into e-commerce](#) in the EU, pursuant to Article 17 of [Regulation 1/2003](#).

[The aim of this sector inquiry](#) is to allow the Commission to gather data on the functioning of e-commerce markets so as to identify possible competition concerns. It will focus particularly on potential barriers erected by companies to cross-border online trade in goods and services where e-commerce is most widespread (e.g. electronics, clothing and shoes), as well as in digital content. It will initially cover all EU Member States. The Commission plans to publish on this page a preliminary report in mid-2016. Then, following a public consultation on the preliminary report, the Commission plans to publish the final report in the first quarter of 2017. The findings of this sector inquiry will allow the Commission and national competition authorities to better focus possible enforcement actions in the area of e-commerce.

[EC announces e-commerce competition inquiry](#)

The European Commission has announced an antitrust competition inquiry into the e-commerce sector in the European Union, as part of 16 initiatives on a digital single market to be delivered by the end of next year. The Commission will send requests for information to a range of stakeholders throughout the EU, and these could include manufacturers and wholesalers as well as e-commerce retailers. The European and International Booksellers Federation (EIBF) has previously [called on](#) the European Commission to investigate what it termed Amazon's "monopoly" on the book market. In the UK The Publishers Association [has called](#) on the government to remove anomalies in the VAT system and address "imbalances" in the retail market, including initiating "an inquiry that acknowledges that the market definition of e-books is separate to that of books in general, into the online-physical and e-book sectors in the UK".

[EC launches e-commerce antitrust probe](#)

The European Commission aims to sweep away barriers between the European Union's 28 national digital markets and a major anti-trust probe is the opening salvo in the campaign.

[EC probe into murky cross border e-commerce kicks off](#)

The EU's executive arm has officially launched its probe into the e-commerce sector to find out why Europeans aren't buying across national borders much.

[Google, Amazon and Facebook reviewed in European Commission's shake-up of digital market](#)

The European Commission (EC) is set to carry out a wide-ranging review of the role of some of the world's biggest online companies as it considers tighter regulation. The months-long inquiry will delve into issues of transparency of search results and pricing, data use, promotion of services and relationships between companies.

[Trade responds to EC Digital Single Market proposals](#)

The Booksellers Association has said it hopes the European Commission's competition inquiry into the e-commerce sector will look specifically at market dominance in e-books. As part of its inquiry, the EC will look at cross-border trade in digital content and the BA hopes it will study issues around accessibility and interoperability in e-books. Tim Godfray, c.e.o of The Booksellers Association, said he was "interested" to see that the EC has launched this enquiry into cross-border trade and the trade body "looked forward to reading the full terms of the investigation." He added: "We hope the enquiry will review the market for e-books across the EC and issues around accessibility, interoperability and market dominance in particular."

Richard Mollet, c.e.o of the Publishers Association, said the digital single market was a "reality" for publishing, and added that today's White Paper from the Commission included some "sensible" proposals for extending this. "It is right that the Commission commits itself to making an assessment of the need for greater certainty around copyright and we look forward to engaging in that process. Such an assessment should be thorough and complete before any legislative proposals are drafted," he said.

[EU consults on cross-border delivery](#)

The European Commission has launched a consultation on delivery across borders, as part of its work on creating a digital single market. The [consultation](#) is open to retailers, customers and delivery companies, and will look at what can be done to improve cross-border delivery services when sending packets and parcels across the European Union. The deadline for contributions to the consultation is 29th July.

Copyright & Piracy

[UK PA: Publishing Needs Copyright as Incentive to Invest](#)

Discussing copyright while participating in the recent Abu Dhabi International Book Fair, the UK Publishers Association's CEO Richard Mollet noted that there is the familiar battle between those who wish to tear everything down, arguing that the old frameworks were established in a pre-digital world of defined borders that are no longer relevant, and those who argue that it is these very structures that allow and support creativity. "It's coming under threat from powerful lobby groups, very often associated with Internet intermediaries who would like it to be easier for them to reproduce and sample works without having to pay creators.

[Election implications](#)

With David Cameron capable of forming a government free of the need to negotiate red lines in darkened rooms, Richard Mollet is chief executive of the Publishers Association considers what the likely implications for publishing and the creative sector.

[5 Seriously Dumb Myths About Copyright the Media Should Stop Repeating](#)

Articles pop up here and there repeating some howling inaccuracies about the legal and economic concept of copyright. This is a short list of seriously dumb copyright myths to help through the clutter of free culture bunkum.

[UK ISPs must block ebook pirate sites](#)

The five largest ISPs in the UK have been handed another blocking order by the High Court, this time mandating they restrict access to sites offering pirated ebooks for download. The action was brought about by the Publishers Association, The ruling means BT, Virgin Media, Sky, EE, and TalkTalk must block customers from accessing seven sites: AvaxHome, Bookfi, Bookre Ebookee, Freebookspot, Freshwap, and LibGen. The sites were said to offer more than ten million titles for download, more than 80 percent of which infringed copyright according to the PA. The trade body argued the ISPs have "actual knowledge" that subscribers were using the sites for illegal purposes.

[PA succeeds in blocking infringers](#)

The High Court has granted an application by the Publishers Association (PA) to block access to seven websites which have been infringing copyright. The application, made under 97A of the Copyright, Designs and Patents Act 1988, means that the UK's main internet service providers (ISPs) - BT, Virgin Media, Sky, TalkTalk and EE – will be required to block customer access to the seven sites.

[Publishers Target e-book Pirates](#)

The International Publishers Association is taking e-book piracy seriously and has started to target websites offering free downloads. A series of websites have been targeted that have a massive collection of pirated content from 16,000 different publishers.

[Ebook piracy running rampant on Google Play](#)

Great numbers of digital books are being pirated and sold on the [Google Play app store](#), despite numerous parties reporting the copyright infringement and complaining to Google.

[Google Play Books Publisher Program Has Been Closed](#)

Google has closed their Play Books publisher program amidst concerns of rampant e-book piracy. The Google Play Publisher Program allows independent authors and publishing companies to include their novels and app guides on the Google Play bookstore. Sadly, this program has been taken over by fake publishers and people uploading pirated apps.

[Copyright infringers fined \\$37.5m](#)

A global piracy ring has been found guilty in a US federal court of intentionally infringing copyright, sharing copies of books from up to 16,000 international publishers. The maximum damages allowed under US law - \$37.5m – were awarded.

Data Protection & Privacy

[Electronic book lovers beware, your e-reader is watching you: Devices track which novels you read and what time you put it down to go to sleep](#)

- The devices can monitor passages you dwell on and time you go to sleep
- Amazon's Kindle collects information about how long users spend reading
- Privacy group calls it alarming to think your e-reader device is reading you
- But e-reader supplier says data is used to help increase the e-book market

Environment & CSR

England Carrier Bag Charge - Defra Visuals & Reporting

Defra is working on a poster, a card on exemptions to the charge and a staff cue card and has looked at what was supplied to retailers in Wales and Scotland. Defra is also working on finding a suitable hashtag and gov.uk address. As this is Government material, it will be locked so retailers will not be able to edit it.

Uses to which the net proceeds have been put

- Defra is proposing a drop down menu with pre populated choices (good causes, no net proceeds, maintained by company, other) and an open free text box to allow retailers to provide additional information if they wish to. Retailers will be able to select more than one option from the drop down menu.
- Defra will check internally on whether companies can upload web links and export data and whether it would be able to publish information such as web links.
- Defra will have a separate page *on voluntary* reporting and will make it very clear that the information requested on this page is *voluntary*. This page will request the total amount donated to good causes and ask retailers to indicate the types of good causes allocated to from a drop down list (e.g. community groups, charities etc).
- The voluntary page would also ask for numbers of paper and reusable bags distributed.

Defra would like to work closely with communications and marketing colleagues in a number of retailers. Relevant contacts should be sent to Muna Ahmad at Defra: Muna.Ahmad@DEFRA.GSI.GOV.UK. If possible, Defra will also be asking that retailers set up a generic email address such as: plasticbags@retailername.co.uk or plasticbags@retailername.com and send this email address along with the details of a personal contact to Defra at: PlasticBagCharge@defra.gsi.gov.uk by 24 July 2015. This will make it possible for Defra to contact retailers with details of how to report their information to Defra before the charging scheme starts in October.

Environment (Wales) Bill

The Minister for Natural Resources is proposing new measures on carrier bags. The Bill will extend the Welsh Ministers powers so that they may set a charge for other types of carrier bags such as bags for life, in addition to the current charge on single-use carrier bags, if evidence shows that the supply and disposal of these types of bags is detrimental to the environment. The Bill also places a duty on retailers to donate the proceeds from the sale of carrier bags to good causes and removes the current restriction so that any money made will be able to be donated to any good cause rather environmental good causes only. Further factsheets on provisions on carrier bags and other areas such as climate change and waste can be downloaded from the Welsh Government website [here](#).

SME Guide to Reducing Energy Costs

The Department of Energy & Climate Change has produced a very useful practical guide on how you might reduce your energy costs. See [here](#) for the booklet. DECC say that the average SME could reduce its energy bill by 18-25% by installing energy efficiency measures with an average payback of less than 1.5 years. And it is estimated 40% of these savings would require zero capital cost. For a bookshop with a 5% profit margin over 3 years, a £500-a-year saving from energy efficiency makes the same profit as £30,000 of extra sales. There's lots of practical stuff on Timers and Thermostats; Doors and Windows; Lighting; Office Equipment (e.g. computers and printers); and the staff kitchen.

Environment Agency Energy Savings Opportunity Scheme

This is a guidance note on how to conduct an ESOS audit. It should help you to understand how you can develop your approach to compliance to ESOS. See [here](#).

This is the compliance document from the Environment Agency which outlines who qualifies and what need to be done for those covered under the scheme. See [here](#).

BRC launches Retail Energy Hub

Our retail energy hub is available [here](#). The BRC aims to use this site to promote the leadership role retail it has in energy efficiency as well as helping retailers to reduce energy consumption in their business. DECC is keen to work with us to provide policy updates through the website to act as a "one stop shop" for retailers. The BRC will continue to seek best practice and pull together information that will help the retail industry to enhance profitability through energy efficiency.

European Commission consultation on the circular economy

The European Commission has today published its consultation on the circular economy [here](#). The response deadline is Friday 28 August. The consultation follows a multiple choice format and covers:

- The production phase (including product design, production and sourcing of materials)
- The consumption phase
- Markets for secondary raw materials
- Sectoral measures (which sector(s) should be considered a priority for EU action, and which relevant measures or actions should be taken)
- Enabling factors to support the development of the circular economy

There is also the ability to upload a dedicated position paper or other related materials. EuroCommerce and BRC are in discussions with the Commission and Defra concerning any work they are doing in response to the consultation and potential UK Government lines.

Finance

[English businesses want more local freedom from Westminster](#)

The results from more than 1,300 English firms show that 42% believe greater devolution to their local area would have a positive impact on their business; while a quarter (26%) think it would have negative consequences. However, while businesspeople want more decisions taken locally, they remain sceptical when it comes to tax-setting powers being handed over to councils.

Property & Rates

Business Rates Structural Review

The BRC has engaged with members, ratings experts and business groups to inform their response to the government's business rates review terms of reference and discussion paper. A framework and a draft response has been circulated. Final submission is due on 12 June 2015.

Landlord Tenant Act 1954

The BRC is working with the British Property Federation on the potential for reform under the Act in order to streamline Lease negotiation and remove unnecessary costs for both the landlord and tenant through complex and outdated processes support by the Act. The BRC aims to develop agreed principles for potential reform with the British Property Federation over the next few months with a view to agreeing the reforms both parties would benefit from.

Taxation & VAT

[Amazon to begin paying corporation tax on UK retail sales](#)

From the start of this month the online retailer has started booking its sales through the UK, meaning resulting profits will be taxed by HMRC. Amazon has become the first technology company to abandon controversial corporate structures that divert sales and profits away from UK in the face of a clampdown imposed by George Osborne. Christopher North, Amazon's managing director for the UK, and Rob McWilliam, who joined from Asda as finance director two years ago, resigned from the board of Amazon.co.uk Ltd on 1 May. North and McWilliam remain senior executives despite relinquishing their directorships, with the former continuing as country manager and head of Amazon in the UK, while McWilliam is the UK's vice president of the consumables division.

[Amazon ends UK sales diversion to Luxembourg](#)

Amazon has started booking sales made to customers in the UK through the UK branch, instead of diverting sales through Luxembourg. The company's new arrangements came into force on 1st May. Previously retail sales have been recorded in Luxembourg, where Amazon has its European headquarters, regardless of where in Europe the customer is.

[Booksellers welcome Amazon tax change](#)

Booksellers have welcomed the news that Amazon is to start booking sales made to customers in the UK through its UK branch instead of through Luxembourg, though some say they remain "cautious" about the development.

[EU plunges ahead with Amazon probe despite change to tax practices](#)

Amazon has changed its tax-payment practices in Europe, but that is not going to halt the European Commission's investigation into what it considers to be a likely illegal tax deal with Luxembourg. "The Commission's state aid investigation is ongoing and will continue. We are examining the concerns that the tax ruling granted by Luxembourg to Amazon is providing the company with selective advantages," [Commission spokesman Ricardo Cardoso said](#), adding that the Commission will consider the announced changes to the Amazon group's tax structure.

[EU delays decision in Apple tax probe](#)

European Union Competition Commissioner Margrethe Vestager has pushed back the self-imposed deadline to complete investigations into the tax practices of Apple, Amazon, Starbucks and Fiat Finance & Trade. Vestager didn't say when her office would complete the investigations, but told the European Parliament that her office "will not sacrifice the rule of law or the quality of our work to speed up the process."

[EU targets single VAT registration on B2C e-commerce 2017](#)

The European Commission issued a bold commitment to reform and simplify the [EU VAT](#) regime for [Internet goods retailers](#) selling to consumers. It came as part of a 16-part initiative to boost the European Union's single market's digital economy. Proposal 8 of the EC's set of initiatives includes the proposal to introduce a single [VAT registration](#) and reporting regime for e-retailers selling across the 28 EU member states. This would be modelled on the [2015 Mini One-Stop-Shop](#) portals introduced to enable digital services providers to just register once and complete single quarterly VAT returns to cover all countries. Secondly, the EC has recommended that all countries have the same initial VAT registration threshold for foreign B2C online sales. Lastly, the Commission has also put forward a proposal for the countries to be able to perform multiple country audits.

[UK wins EU Parliament support on changes to apps, streaming music and video VAT](#)

The European Union Parliament joined the UK in calling for a rethink of the new [2015 EU digital VAT changes](#). The January 2015 changes shifted the rules on which country's VAT rate to charge on sales to consumers of e-services. The reforms also introduced a reporting online portal, 'MOSS'. However, the changes have created widespread confusion for many UK micro businesses that now have to VAT register for the first time.

[UK extends VAT MOSS concession for micro-businesses](#)

HMRC, has announced an indefinite extension of a compliance concession for micro-businesses operating under the new Mini One-Stop-Shop regime for EU VAT on digital services to consumers. The 6-month [MOSS customer ID simplification](#), granted in December 2014, excused micro-businesses - defined as being below the UK's [VAT registration threshold](#) £82,000 per annum - from the detailed requirements for collecting EU customer information. Instead of following customer location guidance issued by the European Commission and implemented into the [EU VAT Directive](#), HMRC will permit micro-businesses to instead rely on information supplied by their payment service provider. There have been less than 10,000 businesses registered under the new 2015 changes that compares to the European Commissions expectation for up to 1 million. This has been blamed on lack of awareness, but also the disproportionate compliance burden place on small business. This has led to calls for an [EU VAT digital services registration threshold](#) to be introduced, similar to the [distance selling VAT threshold](#) on physical goods. A plan is to be put forward by the European Commission in June 2015.

[VAT changes are a mere nuisance for huge retailers but a real blow to self-published authors](#)

The closure of the loophole whereby Amazon routed EU online sales through Luxembourg has had an unintended negative effect on writers. For microbusinesses faced with the job of calculating myriad tax rates, the new regime is an administrative nightmare. Businesses with an annual turnover of less than £81,000 used to be exempt from VAT, now if they sell even one ebook to a customer outside the UK they [must apply VAT to all UK sales too](#). For many, the only feasible option is to sell through Amazon or another large retailer.

[EU to cut VAT rates on digital news June 2016](#)

The European Commission President, Jean-Claus Juncker, has this week called for the harmonization of VAT rates on printed and online newspapers and journals. The plan is to introduce the appropriate amendments to the [EU VAT Directive](#) by June 2016. Once ratified, member states could then apply the change in their local VAT laws.

[GOV.UK Verify](#)

GOV.UK Verify is the new way to prove who you are online so you can use government services safely, like viewing your driving licence or assessing your tax. GOV.UK Verify is being tested in [public beta](#) with users and these departments and services:

- Renew your tax credits online, with Her Majesty's Revenue and Customs (HMRC)
- Claim a tax refund (HMRC)
- Claim a redundancy or insolvency payment, with the Department for Business, Innovation and Skills (BIS)
- Log in and file your Self Assessment tax return (HMRC)
- Claim rural payments, with the Department for Environment, Food and Rural Affairs (Defra)
- Help friends or family with their tax (HMRC)
- Check or update your company car tax (HMRC)

User feedback will inform continuous improvements and further testing.

In 2015 more companies will join the programme for certification, and [more services](#) and government departments will start to use GOV.UK Verify.

GOV.UK Verify will continue to engage with industry, public and private sectors through the [Open Identity Exchange \(OIX\)](#).