

Geo-blocking: Removing Ambiguity for SMEs

The European Small Business Alliance recommendations to the European Parliament

Key ESBA recommendations for an SME-friendly Regulation on Geo-blocking. ESBA:

- **welcomes the geo-blocking regulation proposal, promoting harmonization and simplification in the European Single Market;**
- **Suggests amending Article 3 to clarify that access does not imply an obligation to sell.**
- **Urges completion on contract law and VAT before implementing geo-blocking**

Background

The European Commission made a commitment to tackle the issue of geo-blocking in the Digital Single Market Strategy released in May 2015, intending to remove barriers to digital trade across Europe. Geo-blocking refers to the practises used for commercial reasons by online sellers that result in the denial of access to websites based in other Member States, or to the products or services sought for; or where different prices or conditions are automatically applied on the basis of geographic location. Legally speaking the concept of geo-blocking was introduced in European law in 2009 after the entry into force of the Services Directive (2006/123/EC). The Consultation on geo-blocking began on 28 September 2015 and finished on 28 December 2015. The European Commission presented a Regulation proposal on the 25th of May 2016 addressing geo-blocking (COM(2016) 289 final). IMCO was appointed as lead committee and the rapporteur is Ms. Roza Thun.

Recommendations

Small Businesses welcome the regulation as a strategy to stimulate cross-border e-commerce and ensure better access to good and services. However, the main concern for the small businesses is the "obligation to sell" stated in article 3 and 4. Small businesses fear this will highly affect their efficiency and would create unnecessary administrative and financial burden. ESBA believes in the merits of the Single Market as it will ultimately stimulate growth by removing barriers within the EU domestic market. However, we believe that this must be achieved by setting the right conditions, rather than forcing the Single Market on small companies. Important legitimate causes for geo-blocking include different VAT regimes, expensive delivery services (with diverging levels of reliability) and strong variations in national contract law, creating legal uncertainty, alongside existing language barriers. ESBA considers it crucial that the VAT and contract law proposals are in place and fully operational before the geo-blocking proposal comes into effect. Without a simplified VAT regime – VAT One Stop Shop – and a SME friendly contract law regime, the geo-blocking proposal will only create additional burdens to cross-border EU trade and might ultimately lead to small businesses choosing to trade local instead.

Article 3: Removing the Room for Interpretation

Article 3 stipulates that blocking *access* to online interfaces and re-routing customers for reasons such as nationality, place of residence or establishment is generally forbidden, unless this is a direct

consequence of EU or national law. The interpretation in the supporting analysis by the IMCO committee of 15 august 2016 has been that the Article only ensures *access*, not the *right to purchase*.¹ However, access to online interfaces is frequently made with the intent to purchase goods or services. Whilst ESBA agrees with the U interpretation, deducing it from the Article is not straightforward. ESBA believes that a passage clarifying that access to online interfaces does not imply an obligation to sell; will resolve the uncertainty and this would leave no room for interpretation.

Article 4

We welcome the adjustments made by Rapporteur Thun which clearly defines that commercial reasons are not to be seen as unjustified reasons for differential treatment. Another important point made in the draft report is the exclusion of purely internal situations (trade within one Member State).

Article 5

The amendment to art.5(1) made in the draft report is from the utmost importance for small businesses. It states that traders have the right to withhold delivery of a good until the payment is completed. This will motivate traders outside their usual territory and stimulate them to accept more different types of payments.

Article 8

ESBA supports the adjustment made by Rapporteur Thun clarifying the legal rights for traders when engaging in passive sales. The amendment states that the trader should indicate to which countries he/she intends to trade and if a consumer from another MS not mentioned on the website engages in a sale, the law of the trader will be applied in all areas of the law.

1. Felice Simonelli (2016). Combatting Consumer Discrimination in the Digital Single Market: Preventing Geo-Blocking and other Forms of Geo-Discrimination, Centre for European Policy Studies, PE 587.315, IP/A/IMCO/2016-06, link [here](#)