

Position Paper

UEAPME¹'s position on the Draft Report on the proposal for a Regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC – (COM(2016)0289 – C8-0192/2016 – 2016/0152 (COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Róza Gräfin von Thun und Hohenstein

UEAPME fully support the underlining principle that preventing and prohibiting discrimination based on unjustified or unreasonable practices is justified and beneficial both for consumers and traders. It is certainly true that limiting consumer opportunities and choice based on unjustified geo-blocking can cause consumer dissatisfaction and fragmentation of the internal market. As a general principle, buyers should be able to purchase and access services from everywhere in the EU and have de facto chances to take full advantage of the single market.

However, as the Parliament acknowledge also in its Report, there exist many objectively justified reasons for a cross-border sale to be blocked, not necessarily of legal nature, such as the very high compliance costs, copyright, or even non-viable or feasible business models. SMEs need to be reassured on their right to choose in which markets to be active and on their freedom of contract.

The freedom to conduct a business, including the freedom of contracts, is a pillar of private law and crucial principle of a highly competitive social market economy, which is protected by the European Charter of fundamental rights (Art.16).

While, we cannot deny that there exist some cases of unjustified geo-blocking, we do question the real need to introduce a new legislative binding proposal due to the uncorrected behaviour of some enterprises. With this proposal, the majority of SMEs will have to pay the consequences for the wrong behaviour of some. The burden will be particularly high for SMEs which wanted to sell only locally and not cross-border.

This Regulation, that pretends boosting digital businesses while ensuring equal rights to all consumers across Europe, will instead hinder traders from going online and thus affect negatively their competitiveness.

Indeed, according to Eurobarometer 396², there has already been a decrease in the proportion of retailers who report using e-commerce compared to 2012. Even if the general use of e-commerce still increased, this can be explained by the fact that fewer but larger providers use it as a distribution channel.

Forcing enterprises to sell their products to the whole internal market and to conclude contracts with customers irrespective of their location instead of allowing them to start locally and in case of success expand step by step, will certainly deter them from starting engaging in online activities.

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](https://data.europa.eu/euodp/en/data/dataset/S2032_396).

² https://data.europa.eu/euodp/en/data/dataset/S2032_396 ENG

SMEs will be strongly impacted by this Regulation, especially when dealing with after-sale provisions. We want to highlight and draw the attention of the European Parliament to the fact that the proposed regulation on geo-blocking need to be carefully analysed in parallel with the so-called Digital Contracts proposals. Indeed, the legal implications originating by the combination of the two proposals may have important consequences on businesses. As explained above, this might even result in fewer choices for consumers as SMEs might be discouraged to enter the digital single market given the complexity of the legal system.

The impact assessment conducted by the European Commission states that impacts for SMEs “would be minimal”³, this seems hardly credible and objective. This is why, since the very beginning, UEAPME asked for a proper **impact assessment** as foreseen by the Commissions Better Regulation principles and advocated to first finalise the proposal on the digital contracts before discussing geo-blocking.

Banning technical geo-blocking will also have a compliance costs for enterprises. Indeed, Art. 3 of the proposal will force millions of businesses in Europe to check their websites whether they are in all parts fully accessible for each potential consumer all over Europe. Business will be obliged to adapt their website to ensure full access.

The major problem for SMEs concerning the proposal is that it creates legal uncertainty. It remains unclear which would be the applicable law when the trader will have the de facto obligation to conclude contracts with consumers residing in a country they are not targeting (i.e. so called passive sale). As stated also by the IMCO Report, legal uncertainty and associated risks like the applicable consumer protection, environmental and labelling laws lead to a hesitation of companies to engage in cross-border sells. SMEs cannot be expected to know the legal framework and provisions of all 28 Member States, especially if they are active in only a limited number of countries. **Therefore, it is of utmost importance to guarantee that the trader law would be the one applicable in case of the so-called “passive sales”.**

Although UEAPME remains convinced that this proposal is not necessary, we acknowledge the rapporteurs efforts and attempt to find an acceptable solution for all parties.

Mrs. Thun’s Report recognises all the difficulties companies may encounter in applying this Regulation. Indeed, article 8a is the most valuable addition to the original proposal. The Regulation should explicitly guarantee that the trader would not be obliged to apply contractual rules and/or product specific rules based on the consumer’s domicile, in cases when the trader does not operate in that market. Companies need to be reassured that the applicable law would be determined by the market where the trader is normally operating. The Regulation might be bearable for SMEs only provided these conditions.

We also welcome the introduction of Recital 21b (Amendment 23), Article 3(2) (Amendments 52 and 53) and Article 5(2) (Amendment 69).

The approach of the rapporteur aiming at minimising the risks for companies contained in this proposal is praiseworthy. However, it should not be forgotten that it would not be necessary to reduce any risks for SMEs, if the proposal itself would not increase them in the first place.

For further information on this position paper, please contact:

Chiara Aprea
Advisor
c.aprea@ueapme.com

³ <https://ec.europa.eu/digital-single-market/en/news/impact-assessment-accompanying-proposed-regulation-geo-blocking>, pag. 40