

Open Consultation on GEO-BLOCKING AND OTHER GEOGRAPHICALLY-BASED RESTRICTIONS WHEN SHOPPING AND ACCESSING INFORMATION IN THE EU

INTRODUCTION

This consultation aims at gathering views and opinions on the different restrictions faced by users, consumers and businesses when they access or provide information, shop or sell across the borders in the European Union.

This will inform the Commission for its ongoing work in preparing legislative proposals on geo-blocking under the Digital Single Market Strategy as well as the follow up to the forthcoming Internal Market Strategy for Goods and Services planned for October 2015.

Questions apply regardless of whether the action takes place online or offline, unless the context makes it clear otherwise.

The public consultation is available in all official languages.

The views expressed in this public consultation may not be interpreted as stating an official position of the European Commission.

If a respondent wishes to have confidential treatment of his/her response, this will be ensured.

For further information and background on this consultation, please refer to the background document

[Geoblocking%20introduction%20text.pdf](#)

How to answer the questionnaire

This questionnaire is composed of two sets of questions: one for customers and one for traders. If you are a consumer or reply on behalf of consumers, please choose "consumer perspective" in question 1.

If you are a business or reply on behalf of businesses you can choose to reply:

- as a business mainly selling goods and services, please choose "company perspective" in question 1

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- as a business mainly buying goods and services, please choose "consumer perspective" in question 1

- as a business selling AND buying goods and services, please choose "consumer AND company perspective" in question 1

INFORMATION ABOUT THE RESPONDENT

1. Please indicate who you are (single choice):

Other

Please specify

European trade association representing online platforms

2. Please indicate your place of residence or establishment:

3. Please specify if you are based in:

A city (cities of more than 50,000 inhabitants)

4. Please provide your contact information (name, address and e-mail address)

EDiMA, 60 rue due Trone, 1050 Brussels, Belgium info@edima-eu.org

5. Is your organisation registered in the Transparency Register?

Yes

Registration No.

53905947933 43

You have the opportunity to register your organisation

(http://europa.eu/transparency-register/index_en.htm) before you submit your contribution.

If you are an association, would you like to share with the Commission any evidence collected from your members or from other sources on geo-blocking or/and other forms of discrimination based on customer's nationality, location or residence?

500 character(s)
maximum

Please upload your file (pdf or doc)

QUESTION

Consumer and company perspective

1. As a general principle, consumers and businesses should be able to purchase and access services from everywhere in the EU.

I strongly agree

Additional comments

3000 character(s) maximum

We believe that in order to allow for and foster innovation in Europe it is essential that services are made accessible across EU but in a balanced fashion. We would therefore caution against measures that would threaten the fundamental principles that guarantee the freedom to conduct business (Article 16 of the EU Charter of Fundamental Rights). The Digital Single Market should enable flexible and easy access to legal products and digital content and services at a fair price for consumers, while boosting diversity, creativity and culture and generating more revenues for creators.

Whereas the end objective should remain: improving accessibility to goods, services and content online – a nuanced way of balancing this objective with supporting innovation is needed. Rather than impose a sweeping ban on geo-blocking, which could ultimately unearth a plethora of legal uncertainties and greatly impact the business models and capabilities of many EU businesses, a potential resolution could be: to limit the ban on geo-blocking less sensitive types of content, archive film material in situations where all exclusive licensing windows across the EU markets have lapsed; and for content that is not available in a particular market a license can be obtained from a licensor in another market. Sweeping bans on geo-blocking are not the way to

address the accessibility issues and will only leave the online space with a number of imbalances and some service providers unable to continue providing their services online.

It should however be noted that geo-tailoring is beneficial to both consumers and businesses. Traders benefit from a geo-tailored approach as they currently must comply with national requirements to be able to place content on a particular market (including applicable consumer laws, copyright law, language requirements, VAT, etc.). Consumers benefit from this approach because the content and services they access will be more tailored to reflect local requirements (language, cultural demand, local services) and a geo-tailored market will enable products or services to offer specialised opportunities reflecting regional specific holidays, events and celebrations.

2. Which forms of geoblocking and other geographically-based restrictions do you consider as creating significant obstacles to the single market?

	I strongly agree	I agree	Neither agree nor disagree	I disagree	I strongly disagree
Blocking any access to websites across borders, thereby denying access to information, comparisons of service or product ranges and prices), with or without rerouting to 'national' websites			X		
Allowing access to websites and offers across borders but denying the possibility to complete the order or purchase after obtaining information on			X		
Allowing access to websites across borders but denying the possibility to download digital products across borders			X		
Allowing access to websites and offers across borders but denying the possibility to pick up, deliver or ship the goods across borders			X		
Differentiating prices or other conditions on the basis of the nationality of the customer			X		
Differentiating prices or other conditions on the basis of the country of residence of the customers or the location from which they are ordering or accessing the services			X		

Denying access to additional services on the basis of the country of residence of the customers or the location from which they are ordering or accessing the services (e.g. loyalty cards, discounts, reductions, vouchers)			X		
Denying access to after-sales services on the basis of the country of residence of the customers or the location from which they are ordering or accessing the services (e.g.			X		
Other forms of geo-blocking			X		

Comments

3000 character(s) maximum

For both consumers and business alike the fragmented nature of the European market for tangible as well as digital goods, content and services is still a major stumbling block to growth, jobs and innovation within the single market.

Traders, businesses and service providers offering goods and services from different EU Member States are still faced with legal uncertainty and territorial fragmentation as divergences remain in a number of areas such as consumer protection laws, varying VAT regimes, package delivery, national rating systems, language requirements, child protection obligations, and promotion of local content, to name a few that necessitates traders and service providers to develop market-specific offerings.

3. There are different ways in which geo-blocking and other geographically based restrictions can take place. How would you classify the following barriers?

	Very important	Important	Neutral	Not important	I don't
Re-routing to a website targeting the home country of the visitor without the			X		
Refusing access to a website or an offer based on IP-address (or other technical means allowing to determine			X		
Refusing access to a website or an offer based on customers'			X		
Refusing access to a website or an offer based on customers'			X		
Terminating the transaction based on customers' disclosure of their residence			X		

Refusing foreign credit cards or other foreign means of			X		
Linking access to, purchase or download of digital goods or services to the postal address of the customers			X		
Linking access to or purchase of non-digital goods or services to the postal address of the			X		
Application of disproportionately higher shipping costs based on the location of the			X		
Providing a format for address, postal codes or phone etc. which is specific to certain			X		
Other ways of geo-blocking					

6. Have you applied geo-blocking or other geographically-based restrictions in your business (B2B and B2C)?

Yes

No

If yes, to achieve which aim:

To provide better service to the consumer, language and to comply with the current legal framework

8. If you apply restrictions or different conditions to customers located in different EU countries, in which circumstances do you provide them with an explanation?

We give an explanation upon request of the customer

We provide a full explanation upfront on our website, in publicity material or in the shop

We provide explanation to consumer associations if they ask us individually

We have not been asked any explanation

Explanation: All four selections occur

9. In your opinion, what - beyond legal constraints - might be considered other objective factors justifying geoblocking or, more generally, different treatment of users and customers based on their residence or geo-location?

3000 character(s) maximum

Often geo-tailoring is used to adapt to national markets and requirements. As well, geo-tailoring offers consumers greater advantages from content and services as the products and services will reflect regional and national specifications (languages, local services) and local traditions including holidays and celebrations.

10. In your opinion, in which circumstances should geo-blocking, refusing a transaction or, more generally, different treatment of users and customers based on their residence or geo-location not be justified?

	Not justified	Neither justified nor	Justified	I don't know
1. Cross border delivery is easily accessible and the customer is prepared to pay additional				X
2. The customer is prepared to organise the delivery				X
3. There is no additional cost linked to delivery or other administrative burden (for example: simple downloading of digital content, the customer will use the service/good				X
4. Customers are prepared to take the risk of concluding a transaction in the language of				X
5. The means of payment used by the customer is internationally valid and accepted in the	X			
6. The brand of the physical store (franchisee or subsidiary) also exists in the customer's country				X
7. The trader advertises its products or services also in the customer's country	X			
8. The trader has a website targeting specifically the country of the customer	X			
9. The customer is moving to the seller's country but is not registered			X	
10. Nationality can never be a justification		X		
11. Residence or location of the customer can never be a		X		
12. Other circumstances				X

Please explain

3000 character(s) maximum

Concerning a seller/trader's websites/advertisements targeting specifically the country of the user, the Consumer Rights Directive (CRD) already addresses the information requirements of traders to consumers within Article 6, and furthermore the concept and further criteria, including use of different language or currencies of directing one's commercial or professional activities to the country of the consumer was already addressed by the Court of Justice.¹

[1] Peter Pammer C-585/08 and Hotel Alpenhof GesmbH C-144/09

11. What should constitute elements of a policy response at the EU level on unjustified geo-blocking and other geographically based restrictions?

	I strongly agree	I agree	Neither agree nor disagree	I disagree	I strongly disagree
More transparency: companies should have the obligation to make clear before the (trans)action the detailed, objective and verifiable reasons why they treat customers differently based				X	
More transparency: companies should have the obligation to explain upon request the detailed, objective and verifiable reasons why they treat				X	
Rules including a list of reasons that may never justify treating domestic and foreign users differently				X	
Rules including a closed list of objective and verifiable reasons that may justify treating domestic and foreign users				X	
Rules banning ways and means of discriminatory geo-blocking and other restrictions according to your ranking in question 3 above				X	
Banning the discriminatory blocking of access to websites across borders				X	
Rules imposing on traders to obtain consent of users/customers prior to automatic rerouting to another website (including another language				X	
Rules requiring traders to accept cross-border transactions from users/customers from throughout the EU under the same conditions as				X	
Rules requiring traders to accept cross-border transactions from users/customers from throughout the EU under conditions reflecting the additional administrative costs or				X	

Rules requiring traders to accept cross-border transactions from users/consumers from throughout the EU and to provide delivery cross-border if the users/customers are willing to pay for themselves the				X	
Rules prohibiting traders to refuse the cross-border download of digital products (such as software or video				X	
Rules applicable only to online transactions				X	
Rules applicable only to physical purchases and orders				X	
Other elements of policy response				X	

12. In your view should SMEs, particularly micro enterprises, be exempted from regulatory measures in this context?

No

If yes, under which circumstances?

Any potential or proposed regulatory measures should not only ensure that they do not hinder the growth and development of SMEs and micro enterprises, but that they are clear and workable for both small and large businesses. Any potential or proposed regulatory measures that include carve-outs for certain players will establish new barriers to growth, innovation and competition.

14. How can effective implementation best be ensured?

	I strongly agree	I agree	Neither agree nor	I disagree	I strongly disagree
Monitoring and enforcement by the European Commission				X	
Monitoring and enforcement by national authorities (e.g. consumer protection authorities or				X	
More effective cross-border cooperation mechanism between national authorities to ensure that rules against unjustified restrictions can be enforced within the EU		X			
By alternative dispute resolution bodies (ombudsman, online conciliation services, by (national) European Consumer Centres. for		X			
Others					

15. From a user/customer perspective, what would be the overall impact of addressing geo-blocking and other geographically based restrictions?

- Very positive
- Somewhat positive
- Neutral
- Somewhat negative
- Very negative
- I don't know

16. From a business perspective, what would be the overall impact of addressing geo-blocking and other geographically based restrictions?

	Very positive	Somewhat positive	Neutral	Somewhat negative	Very negative	I don't know
For my business			X			
For the economy			X			
For cross border e-			X			
For cross border trade			X			

Please explain why/which opportunities?

3000 character(s) maximum

EDiMA believes that a harmonised, consistent and coherent approach to addressing geo-blocking and other geographically based restrictions will benefit consumers and businesses dramatically by facilitating the development of a more robust marketplace with greater consumer choice, and higher levels of consumer confidence with respect to cross-border access to online goods and services.

Whereas the end objective should remain: improving accessibility to goods, services and content online – a nuanced way of balancing this objective with supporting innovation is needed. Rather than impose a sweeping ban on geo-blocking, which could ultimately unearth a plethora of legal uncertainties and greatly impact the business models and capabilities of many EU businesses, a potential resolution could be: to limit the ban on geo-blocking to less sensitive types of content, archive film material in situations where all exclusive licensing windows across the EU markets have lapsed; and for content that is not available in a particular market a license can be obtained from a licensor in another market. For audio visual content, the country of origin principle, with its one stop regulatory approach to the free movement of services across the EU, is one of the greatest achievements of the AVMS Directive. It needs to be reinforced.

Sweeping bans on geo-blocking are not the way to address the accessibility issues and will only leave the online space with a number of imbalances and some service providers unable to continue providing their services online.

17. Can you indicate for each of the possible measures listed what would be the impact on your activities, in terms of new market opportunities as well as additional costs or burden?

	Very positive	Somewhat positive	Neutral	Somewhat negative	Very negative	I don't know
More transparency: companies should have the obligation to make clear before the (trans)action the detailed, objective and verifiable reasons why they treat customers differently based on					X	
More transparency: companies should have the obligation to explain upon request the detailed, objective and verifiable reasons why they treat customers differently					X	
Rules including a list of reasons that may never justify treating domestic and foreign users differently					X	
Rules including a closed list of objective and verifiable reasons that may justify treating domestic and foreign users differently					X	

Rules banning ways and means of discriminatory geo-blocking and other restrictions according to your ranking in					X	
Banning the discriminatory blocking of access to websites across borders					X	

Rules imposing on traders to obtain consent of users/customers prior to automatic rerouting to another website (including another						X
Rules requiring traders to accept cross-border transactions from users/customers from throughout the EU under the same conditions as those applied to users/consumers of the						X
Rules requiring traders to accept cross-border transactions from users/customers from throughout the EU under conditions reflecting the additional administrative costs or burdens						X

Rules requiring traders to accept cross-border transactions from users/consumers from throughout the EU and to provide delivery cross-border if the users/customers are willing to organise themselves the delivery and cover the						X
Rules prohibiting traders to refuse the cross-border download of digital products (such as software or video games)						X
Rules applicable only to online transactions						X
Rules applicable only to physical purchases and orders					X	
Other impact						

18. If you think that EU measures in this area would impose significant additional burden on traders, which burden do you think of?

- Additional administrative compliance costs X
- Additional costs in the area of marketing or web design X
- Additional personnel costs X
- Additional delivery costs X

Other type of additional costs (please specify)

As well, EU measures in this area would also likely to have a negative impact on the user experience for online purchases (impact on conversion rate) and other types of additional costs, for example, include the necessity to re-engineer entire ecosystems to detect the applicable national legal framework throughout the purchase flow.