21 Dec 2015

Dear Sir/Madam

Open Consultation on Geo-blocking

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to the above named consultation.

FSB is the United Kingdom's (UK) leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. FSB is non-party political, and with 200,000 members, it is also the largest organisation representing small and medium sized businesses in the UK.

Small businesses make up 99.3 per cent of all businesses in the UK, and make a huge contribution to the UK economy. They contribute 51 per cent of GDP and employ 58 per cent of the private sector workforce. We understand this position to be similar in all Member States of the Union.

Between a fifth and a quarter of FSB members (22%) export their goods, products or services overseas. Of those, 82% sell to EU countries.

We trust that you will find our comments helpful and that they will be taken into consideration. You may publish our contribution under our name.

FSB is happy to meet in person to discuss the topics of this consultation.

Yours faithfully,

David Caro

Chairman of EU and International Affairs, Federation of Small Businesses (FSB)

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FSB response to the Open Consultation on Geoblocking

December 2015

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

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to the above consultation document on behalf of its 200,000 members across the UK.

Small Business trade across borders in the European Single Market

Between a fifth and a quarter of FSB members (22%) export their goods, products or services overseas. Of those, 82% sell to EU countries. Just over a quarter (27%) of FSB members import their goods, products or services from overseas. Of those, 77% buy from other EU countries.[1]

FSB encourages its members to digitalise and find new (online) markets. After all, the UK internet economy is the largest of the G-20 countries as percentage of GDP.[2]FSB members are active in all sectors of the economy. This means that those selling online are likely to make supplies within all the B2C e-commerce types:

- Telecommunications
- Broadcasting
- Electronically supplied services
- Distance sales of Goods
- Other supply of Goods or Services

Of those who export, 82% trade with other EU member states. The EU is therefore the most important export market for FSB members.

For reasons of clarity and for the purpose of this consultation response, FSB considers the sale of online goods as a service and will take the perspective of businesses as sellers and not as consumers.

[1] FSB Small Business Index Q3 2015.
[2] Boston Consulting Group 2015.

Introduction to Geo-blocking

Geoblocking occurs when a user cannot access a website or content, either through the action of the website owner and/or seller on the basis of a user's IP address, (billing) address or language. Although at first sight, geo-blocking appears to go against the underlying principles of the Single Market, there are very real reasons for its existence, even in a unified market. It currently helps to protect copyrights and preserves income from national broadcasting fees. It also allows for companies to target certain parts of the market (e.g. certain countries/regions) and adapt prices and products to such circumstances. We still need to recognise that what may be attractive goods and services in Sweden, for example, may not necessarily be the same in Italy.

FSB wants an open but fair (digital) Single Market, and the problems related to geoblocking need be solved. However, potential legislation on geo-blocking shouldn't lead to unintended consequences such as onerous obligations for sellers, or a limited ability to use pricing and marketing tools or just discourage cross-border trade. Therefore, what is justified and unjustified geo-blocking need to be thoroughly thought through and any measures need to be assessed against the 'Think Small First' principle in order for small businesses to continue to benefit from the Single Market. As per the recent Inter-institutional agreement on Better Regulation, a thorough impact assessment should be undertaken to measure the effects on competitiveness on firms and EU economic growth.

Key Issues around geo-blocking

FSB is both advocating good business practice among its members, as well as legislation that can achieve economic growth, is not overly strict and has appropriate exemptions. Instead of a strict and overbearing legal obligation to make clear before the transaction, the detailed, objective and verifiable reasons why businesses treat customers differently based on their residence, FSB would like to see guidance on how they can deal with situations where they don't want to sell to certain regions or countries.

One of the most important reasons for geo-blocking is residence or nationality of the customer. FSB fundamentally disapproves of any discrimination on the basis of nationality. However, there are valid reasons for not selling to certain regions or countries, for example when costs of sending a parcel somewhere outweigh the benefits.

There are many reasons for geo-blocking, which cannot all be listed. FSB would like to see **a closed list of *unjustified* reasons for geoblocking**. This has the advantage that everything that is not on that list is justified and this brings certainty to small businesses.

Below are five key reasons why small online businesses may choose to geo-block customers from a certain region or country:

1) The shipping costs are too high compared to the value of the product

Often, small businesses sell lower value items in low volumes. In addition, they cannot always obtain the benefits of economies of scale as a larger business would be able to. Also, guaranteed and timely delivery requires (cross-border) tracking options, which are more expensive, if possible at all. So if the operational margins are substantially reduced because of shipping costs, an online seller should be free to make a business decision not to sell to a certain or country.

Lack of competition in the postal services of many EU member states is a contributing factor to the high shipping costs which make such sales untenable for many small businesses.

2) The cost of processing cross-border payment is too high or too risky compared to the value of the product

The existence of different payment systems in Europe requires businesses to be adaptable. The Single European Payment Area (SEPA) is making cross-border payment increasingly straightforward, but issues still remain. In addition, investments in payment systems that cater for all cards and means of payment are costly. It is still difficult to recover payment, and costs associated with transactions and exchange rate remain.

3) A business sells at different prices to a) reflect different external costs in different countries, or b) to sell lighter or out of season versions of the product, a limited version for a certain market, or certain colours.

There are differences in sales volumes and for some countries businesses use a representative, for others they don't. Whether an item is sold in bulk via an agent or as one-off shipping makes a difference to the base cost of a product. The possibility to reflect this in the purchase price should remain. Also, there is sometimes a need for translation, shipping and tracking costs to vary. However, price-differentiation should be justified and not used to get round legislation.

4) A businesses legitimately chooses to avoid a country as they don't want to deal with local rules

Although the EU is a Single Market, minimum harmonisation allows countries to maintain local rules in some areas. For example, there could be a need for translations accompanying the customer relationship. A business should be allowed to decide on which customers it wishes to act for, without being unfairly discriminatory. For this reason a business should be able to choose not to sell to a country if its rules are too onerous.

5) The business is legitimately choosing not to register with a country's VAT authority or with the VAT Mini One Stop Shop (VATMOSS)

Businesses that sell goods report difficulties with having to register, account and pay for VAT in other member states as soon as they reach the distance sales threshold of a member state. A business may stop selling to that country as soon as its sales approach the distance sales threshold of that country ('threshold effect').

Those that sell e-services across borders and that are not registered for VAT in the UK are facing the choice between a) registering for VAT in the UK (in order to use VATMOSS), b) registering for VAT in every member state they sell to, or c) not selling to EU customers at all. Obviously, potential geo-blocking legislation won't apply in the latter case.

It is a reality of modern cross-border trade that some small businesses – in particular first-time exporters, will choose not to sell to certain EU countries, whether this is based on burdensome local rules, excessive shipping costs or personal choice, it is a legitimate business decision to do so.

SME Exemptions

FSB welcomes exemptions for small firms on a case-by-case basis but is cautious when it comes to blanket exemptions. Exempting small firms from measures that regulate the Single Market is not always straightforward and risks creating a two-tier single market. We need to see more detail of potential exemptions for small firms with regard to geo-blocking in order to assess their usefulness or to see whether they go far enough.

Yours faithfully,

David Caro
Chairman of EU and International Affairs, Federation of Small Businesses (FSB)

For further information

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