



PRIME MINISTER'S OFFICE OF HUNGARY

State Secretary for European Union Affairs

European Commission
DG Communications Networks, Content and Technology
Unit F1
Avenue de Beaulieu 25
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Subject: Open consultation on geo-blocking and other geographically-based restrictions when shopping and accessing information in the EU– Position of the Hungarian Government

The single market is one of the pillars of the European integration, the engine of common growth that created new opportunities for both the EU enterprises and citizens. Exploiting the opportunities of the single market would contribute to the competitiveness and growth of the European Union. Hungary is committed in supporting all the initiatives of the Commission, which aims at unleashing the potential of the single market. Therefore, we welcome the recent proposals of the European Commission in this field, especially the Digital Single Market Strategy published on 6 May 2015 and the Single Market Strategy presented on 28 October 2015.

We believe that the strategies correctly identify the main barriers to the completion of the border-free single market that the European enterprises and citizens have to face on a daily basis. Fully in line with the principles and proposals of the Single Market Strategy, it is crucial also for Hungary to prevent the unjustified geographically based content restrictions and geo-blocking as well as the discrimination of consumers on the basis of their place of residence or nationality. We welcome that the Commission has identified on time the gravity of the problem and its negative impacts on competitiveness and growth, and we also welcome that the Commission announced in the framework of the implementation of the Internal Market Strategy the public consultation for the review of the EU Satellite and Cable Directive and the public consultation on geo-blocking and other geographically based restrictions when shopping and accessing information in the EU.

Preventing unjustified geographically based content restrictions is crucial for Hungary, since arising from its specific historical circumstances a large Hungarian community whose mother tongue is the Hungarian resides outside the territory of Hungary. Therefore, it is a particularly important national and cultural policy objective for Hungary that the Hungarian community living outside the borders of the country could get access to the quality Hungarian contents



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preserving and strengthening the Hungarian identity. The cross-border broadcasting of these contents is hampered by legal restrictions.

The restriction of broadcasting rights of sport events, which is a specific subcategory of the unjustified geographically based content restriction, constitutes a major problem for us. The broadcasting rights for the live transmission of sport events (Olympic Games, Premiere League, etc.) in the EU are licensed by the sport event organizer on a territorial basis, therefore, the licensed media providers hold the broadcasting rights. Accordingly, every media provider is granted exclusive rights to broadcast the sport events on the territory of their country of establishment. Naturally, the media providers broadcast the sport events on the official languages of their country in order to meet the expectations of the local audience. A further specificity of the Olympic broadcastings is that the television company of a given country draws up a programme from sport events relevant for the athletes of that country and which is accessible exclusively from that particular country. Consequently, the consumers have to face not only language but content restrictions too.

In the license agreement concluded between the rightholders and the media providers, all media providers undertake to enable the reception and accessibility of the sport events only on the territory of their country of establishment, which implies that that the local language version of the sport programme is accessible only to those residing or staying in the territory of that country. The media providers are obliged in the license agreement to prevent the public from receiving their broadcasts outside the licensed territory and to that effect the media providers are obliged to ensure that all broadcasts that are capable of being received outside their territory are securely encrypted. The media providers are prohibited from supplying decoding devices giving access to the sport events for the purpose of being used outside their licensed territory. These contractual arrangements hamper the customers residing outside the licensed territory to buy the decoder devices and to get access to the sport events in their mother tongue and in the case of Olympic Games and other European or world sport competitions to follow the performance of their athletes.

This model which is based on unjustified geographical content restriction has the negative consequence that the media providers are prohibited to broadcast the sport events outside the territory of their country of establishment and to conclude subscription contracts with customers residing outside the territory of their country of establishment. Besides they are obliged to prevent the reception of the sport events on contractual basis (encryption, territorial restriction of the purchase of decoder devices, geo-blocking) from outside the licensed territory. This contractual arrangements undermine the completion of the single market since it fragments the single market along borders of the Member States.

Regarding the license agreements on broadcasting, we would like to draw the European Commission's attention to the judgment of the Court of Justice of the European Union in the



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joint cases C-403/08 and C-429/08 *Football Association Premier League and Others*, which lays down that the above described contractual arrangements constitute restriction on competition and is contrary to the freedom to provide services. Hungary welcomes the judgment of the Court of Justice of the European Union, which lays down that the provisions of the exclusive license agreement constitute restriction on competition under Article 101 of the TFEU, since they oblige the media provider to refrain from supplying decoding devices giving access to the sport events outside their licensed territory (the territory of the relevant Member State).

The Hungarian Government calls on the Commission to tackle this problem (related to the free movement of Union citizens and their family members) as soon as possible at EU level in accordance with the case-law of the Court of Justice of the European Union and the objectives of the Digital Single Market Strategy.

We believe that the above presented problem is awaiting solution in the spirit of the Digital Single Market Strategy and the new Single Market Strategy at EU level. The settlement of this issue would contribute to the cultural diversity, increase of diversity and the strengthening of the social cohesion too, which are the cornerstones of the European Union.

The Hungarian Government is ready to start consultations on this issue with the European Commission. Hungary is going to submit its position through the above-mentioned public consultations and is eager to cooperate with the officers in charge in the European Commission to enhance competitiveness of the European Union, which is, at the same time, in line with our national policy priorities.

Budapest, 4 December 2015

Szabolcs TAKÁCS
State Secretary