



EUROPEAN COMMISSION

*Brussels, 19.10.2016
C(2016) 6705 final*

*Mr Mario LINDNER
President of the Bundesrat
Dr Karl Renner-Ring 3
A – 1017 WIEN*

Dear President,

The Commission would like to thank the Bundesrat for its Reasoned Opinion on the Commission's 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) 289 final}.

This proposal forms part of a broader package of ambitious measures designed to create a Digital Single Market and to unlock the full potential of the Single Market, as announced in the Commission's Digital Single Market Strategy¹ and Single Market Strategy². In response to these strategies, the European Council in its conclusions of 28 June 2016³ called for swift progress in removing barriers to e-Commerce, including unjustified geo-blocking.

The proposal addresses restrictions on cross-border sales which traders apply, particularly but not exclusively, through the use of technology. It also offers a targeted response to the problem of geo-blocking that is affecting more and more customers in Member States who are interested in shopping cross-border.

The Commission welcomes the Bundesrat's acknowledgement that consumers' access to goods and services within the Single Market should be improved. It has also taken due note of the concerns raised by the Bundesrat, particularly in relation to the proposal's compliance with the principles of subsidiarity and proportionality.

As regards the proposal's compliance with the principle of subsidiarity, geo-blocking of customers based on their nationality or their country of residence or establishment constitutes a restriction to the Single Market, as it applies only to transactions between nationals or residents of two different Member States. Due to the cross-border nature of geo-blocking, the Commission considers that, in line with article 5(3) of the Treaty on European Union, the objectives of the proposed action cannot be sufficiently achieved by the Member

¹ COM(2015) 192 final.

² COM(2015) 550 final.

³ EUCO 26/16.

States alone and that, by reason of scale and effects, they can be tackled more effectively and efficiently at EU level. The Commission also considers the proposal to be fully consistent with existing primary and secondary EU law on the internal market of goods and services as well as on non-discrimination.

As regards the proposal's compliance with the principle of proportionality, the Commission considers that the proposal does not exceed what is necessary to achieve its objectives and is limited to solving a problem of cross-border nature that cannot be achieved by the Member States alone. The proposal does not create an obligation for traders to contract and deliver cross-border but requires them in certain cases to treat consumers who are nationals or residents of other Member States in the same way they treat local ones. Accordingly, the proposal will help ensure that there is no discrimination between European consumers. Furthermore, when serving a foreign customer on the basis of the proposal, a retailer would not automatically become subject to foreign consumer law. On matters of jurisdiction and the applicable consumer law, the existing relevant EU legislation remains applicable. Moreover a retailer would not be obliged to take care of after-sales services of goods in the country of residence of a foreign customer.

The Commission would like to clarify that the proposal would not take away the possibility for Member States to prohibit additional payment fees, an option already foreseen under the 2015 Payment Services Directive⁴.

The Commission would also like to stress that the proposal was based on a thorough impact assessment⁵, which analysed the questions of subsidiarity and proportionality in greater detail. It also took into account the results of an extensive public consultation⁶, as well as several in-depth studies. Particular regard was given to the potential effect of the proposal on micro enterprises.

The points made in this reply are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council, in which your government is represented.

The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Andrus Ansip
Vice-President*

⁴ OJ L 337, 23.12.2015, pp. 35-127.

⁵ SWD (2016) 173 final.

⁶ <https://ec.europa.eu/digital-single-market/en/news/full-report-results-public-consultation-geoblocking>