



EUROPEAN COMMISSION

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C(2016) 7775 final

Mr Mars DI BARTOLOMEO
President of the
Chambre des Députés
19, rue du Marché-aux-
Herbes
L – 1728 LUXEMBOURG

Dear President,

The Commission would like to thank the Chambre des Députés for its 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}.

The proposal addresses restrictions to cross-border sales which traders apply, particularly but not exclusively, through the use of technology, and 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 Chambre des Députés' broad support for the Commission initiative and its agreement to the problem statement. Geo-blocking of customers based on their nationality or country of residence or establishment constitutes a restriction to the Single Market and is cross-border in nature as it only applies to transactions between nationals or residents of two different Member States. The Commission also welcomes that the Opinion shares the Commission's view that there is a need for action at EU level. It has taken due note of the concerns raised by the Chambre des Députés, particularly in relation to the material scope of the proposal and the law applicable to cross-border contracts.

As regards the proposal's material scope, the Commission would like to point out that the 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 called for swift progress in removing barriers to e-Commerce, including unjustified geo-blocking, in its conclusions of 28 June 2016³. Other legislative proposals adopted under the Digital Single Market Strategy, including the proposal for a regulation on ensuring the cross-border portability of online content services

¹ COM(2015) 192 final.

² COM(2015) 550 final.

³ EUCO 26/16

in the internal market⁴, the proposal for an updated Audiovisual Media Services Directive⁵ and the second set of measures modernising the EU copyright framework⁶ are intended to increase access to copyright-protected audiovisual and non-audiovisual works in the digital realm.

As regards the proposal's personal scope, the Commission would like to reiterate that Business-to-Business (B2B) contracts are covered by the proposal when the business receiving the service or good is the end user of the product or service at hand. Transactions on the wholesale level, however, are not in the scope of the proposal, since a non-discrimination rule in this respect would conflict with EU competition rules. Relations between businesses on the wholesale level are dealt with by EU competition policy in general and regulated in detail in the Vertical Block Exemption Regulation.⁷

As regards the concerns raised in relation to the law applicable to cross-border contracts, the Commission would like to point out that the proposal respects the existing EU legislative framework hallmarked by the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)⁸ and the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁹.

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.

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

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Andrus Ansip
Vice-President*

⁴ COM(2015) 627 final.

⁵ COM(2016) 287 final.

⁶ COM(2016) 593 final, COM(2016) 594 final, COM(2016) 595 final, and COM(2016) 596 final.

⁷ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

⁸ OJ L 177, 4.7.2008, p. 6–16.

⁹ OJ L 12, 16.1.2001, p. 1–23.