

SYNOPSIS REPORT

Summary of Responses to the European Commission's 2015 Public Consultation on

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

EXECUTIVE SUMMARY

A wide majority of the respondents support the problem definition of geo-blocking and other forms of geographically-based discrimination as presented in the questionnaire. At the same time, a number of respondents, especially from business associations, take issue with the wide definition of geo-blocking.

Overall, a majority of respondents from both the consumer and company perspective agree that consumers should be able to purchase and access services from everywhere in the EU.

Almost 90% of consumer respondents experienced geo-blocking or other geographically-based restrictions when shopping in another EU country. Up to 50% of respondents from the company perspective strongly agree that all mentioned forms of geo-blocking and other geographically-based restrictions represent significant obstacles to the Single Market.

According to the respondents the goods and services most affected by geo-blocking are clothing, footwear and accessories, physical media (books), computer hardware and electronics, airplane tickets and car rental. Despite the fact that the questionnaire did not cover restrictions related to copyright or similar licencing practices (such as in the sports sector), several respondents pointed to geo-blocking of digital content such as streaming services, computer games and software, e-books and MP3s.

A majority of respondents from both the consumer and company perspective agree that traders should inform customers about sales restrictions. The majority of respondents also agree that there are no objective reasons justifying website blocking, apart from compliance with explicit legal requirements.

Consumers strongly agree or agree to the suggested policy options, including to require traders to accept cross border transactions without an obligation to deliver.

Businesses and public authorities urge the Commission to define what is justified or unjustified geo-blocking. The majority of businesses oppose an obligation to sell and deliver throughout the EU, highlighting the need to respect their contractual freedom.

A large majority of all respondent groups agree that enforcement of rules should be improved, improving information requirements and ensuring non-discrimination.

The majority of consumer respondents expect a positive impact of most of the suggested measures to tackle unjustified geo-blocking and related discrimination, while companies are divided as regards expected impacts.

II. INTRODUCTION

The Commission launched a public consultation in the context of its initiatives to tackle unjustified geo-blocking under the Digital Single Market Strategy and to fight discrimination on the grounds of residence or nationality under the Single Market Strategy.

The consultation ran from 24 September to 28 December 2015.

The questionnaire was published in 24 languages. The consultation was publicised on the Commission's websites, social media channels as well as in stakeholder meetings. Responses have been published except where respondents asked for confidentiality.

The questionnaire was subdivided into the following three parts (1) "*consumers*", (2) "*trader*" and (3) "*consumer and company perspective*", depending on the perspective selected by the respondent.

While most questions were common to all three parts of the questionnaire, each part also contained questions specifically targeted to the above respondent groups. For a more detailed analysis of respondent perspectives, the respondent groups are broken down into further categories (as can be seen in the following section III of the synopsis report). 433 responses were received.

The College of Europe, Bruges, has provided some assistance to Commission services in the analysis of parts of the replies from a selection of respondents groups. A report prepared by the College of Europe will be published separately from this report in the EU bookshop.

The numbers and percentages used to describe the distribution of the responses to the public consultation derive from the answers provided under the EU-Survey tool. Other submissions of stakeholders to the public consultation, such as position papers and contributions by email, have been taken into account when describing and analysing the views of stakeholders, but without being considered for the statistical representation.

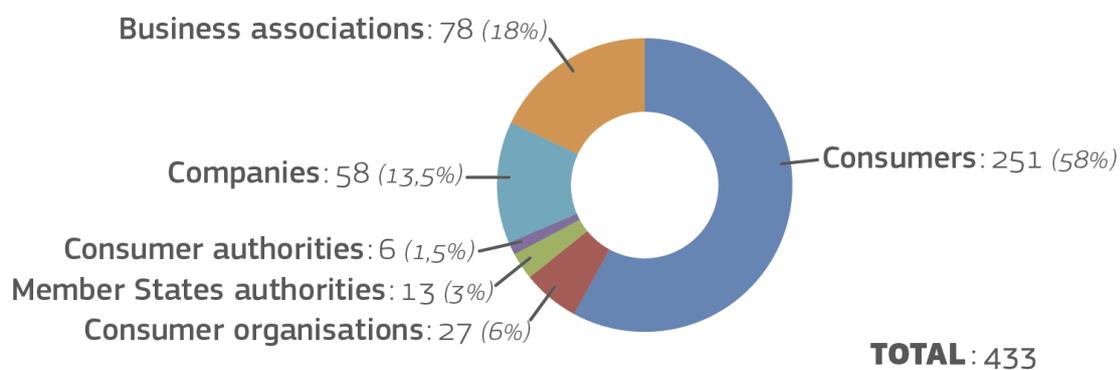
Replies to all questions in the EU-survey were optional. Respondents often chose not to answer all questions. Therefore, where percentages are reported below, these derive from respondents who replied to that question. Those who did not reply to a particular question are not accounted for in the percentages displayed. This is to ensure clarity with regards to the interpretation of the data.

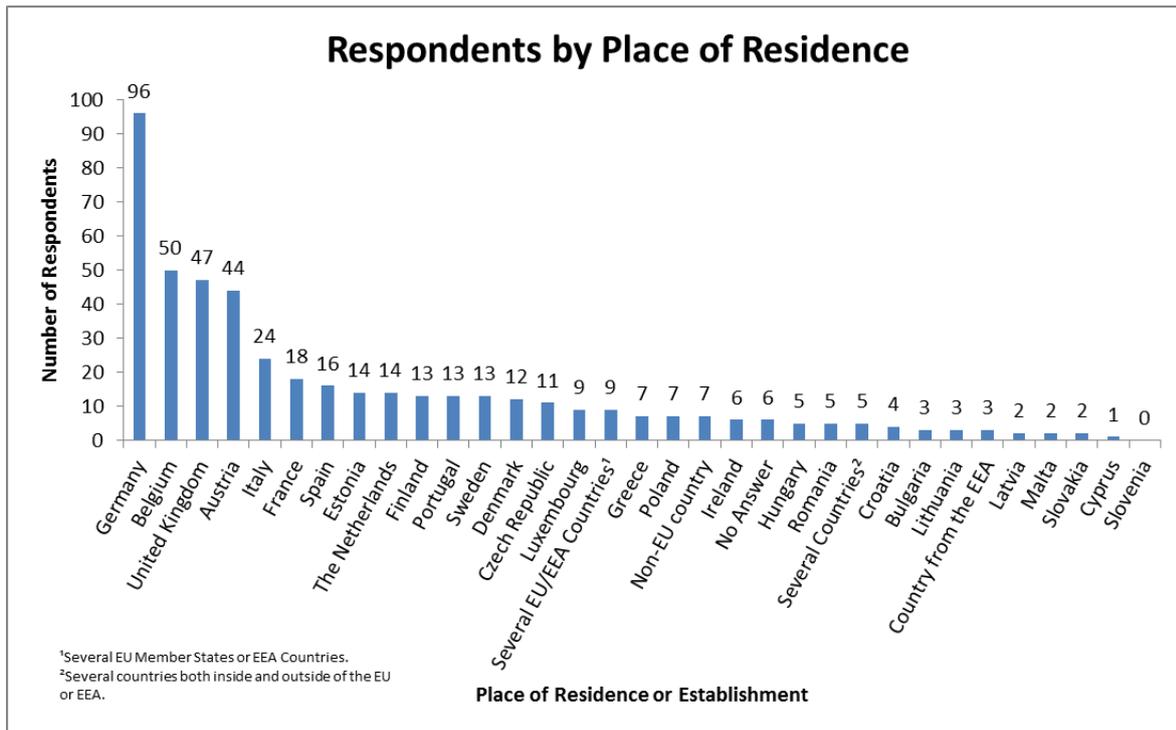
III. OVERVIEW OF RESPONDENTS

The following overview of respondents details the Commission's classification of all 433 responses to the consultation.

	Replies
Consumers	251
Consumer Organisations	27
Member States authorities	13
Consumer authorities	6
Companies	58
Business Associations	78
Total	433

Groups of respondents





Note: Place of Residence as declared by respondents. Total respondents in graph as displayed in the graph above exceed total number of replies (433). This is to account for respondents who stated multiple places of residence.

The consultation sought the views of interested parties, as such the responses cannot be considered to be statistically representative.

Views were sought from consumers, consumer associations, businesses and business associations as well as Member States, their institutions and national authorities.

Based on the responses to the public consultation it is evident that respondents made very different interpretations on which stakeholders that should reply from a “*consumer and company*” perspective. Instead of the intended target groups of firms with a retail activity, the respondents included many different stakeholders, e.g. a small European gaming company, a multinational electronics corporation, a European association in the tourism sector, and a Member State’s Ministry. Given the low number of respondents in this category (25 total submissions) and the perceived ambiguity of the definition of this stakeholder category, certain caution must be observed when drawing any conclusion from these responses.

When analysing the submission to the consultation the replies have been sorted into three wide categories: consumers and consumer organisations; companies and business associations; Member States and national authorities.

Consumers and consumer organisations

Individual consumers from numerous Member States responded. The largest number of responses from individual consumers was received from Germany, the United Kingdom, Austria and Italy. Two submissions from outside the EU have been received.

Consumer organisations responded, representing both national and European level.

Companies and business associations

Companies from numerous Member States responded. The largest number of responses received are from Germany, Austria, France and the United Kingdom. Five submissions were received from companies headquartered outside of the EU.

The majority of the companies who submitted their views indicate that they either predominantly sell on-line or both on-line and offline. Only one responding company exclusively sells in brick-and-mortar shops.

While some responses were received from large companies, many companies described themselves as small or micro enterprises. Companies indicated they are active in many different sectors including retail, software, IT, telecoms and transport.

Numerous business associations responded to the consultation, mostly from national and European level. We also received responses from associations of businesses not headquartered in the EU.

Some associations represent businesses from all sectors. Most associations responding represent companies from specific sectors such as retail/e-commerce, media, industry, fashion, tourism, gambling or legal services.

Some respondents criticise the questionnaire for being biased.

The questionnaire stated that copyright related aspects are left aside. However, several respondents refer to practices based on copyright, e.g. relating to digital content. The relationship of this initiative and other initiatives under the Digital Single Market Strategy such as portability seem not to be known to all respondents.

In terms of views of stakeholders from specific sectors several lottery operators underline that the regulatory framework on gambling including any geographically-based restrictions is up to Member States due to the specific nature of gambling and is in the public interest. From the music sector, associations are concerned about unintended ripple effect on the delivery of digital goods that incorporate copyright content if the scope of the geo-blocking initiative is not clearly defined. Many associations from the audio-visual and media industry highlight that copyright and licensing practices are not part of the scope of this initiative and stress the importance of territorial licensing, the freedom to conduct a business and the right to property of the EU Charter of Fundamental Rights.

Several associations of the publishing sector point out problems associated with collecting VAT in the country of consumption and that many digital products include copyright-protected content (for example political news). The presence on a given market outside national borders generates costs and obligations that a retailer needs to evaluate before agreeing to sell to customers abroad (VAT, fiscal reporting, service as well as contractual obligations), which is particularly challenging for Small and medium-sized enterprises (SMEs).

Member States and national authorities

Several Member States as well as authorities from Member States responded. National authorities mainly include those in charge of consumer affairs or competition issues. In total, public entities from 16 Member States answered to the public questionnaire or provided their views in separate written submissions.

IV. FORMS OF GEO-BLOCKING

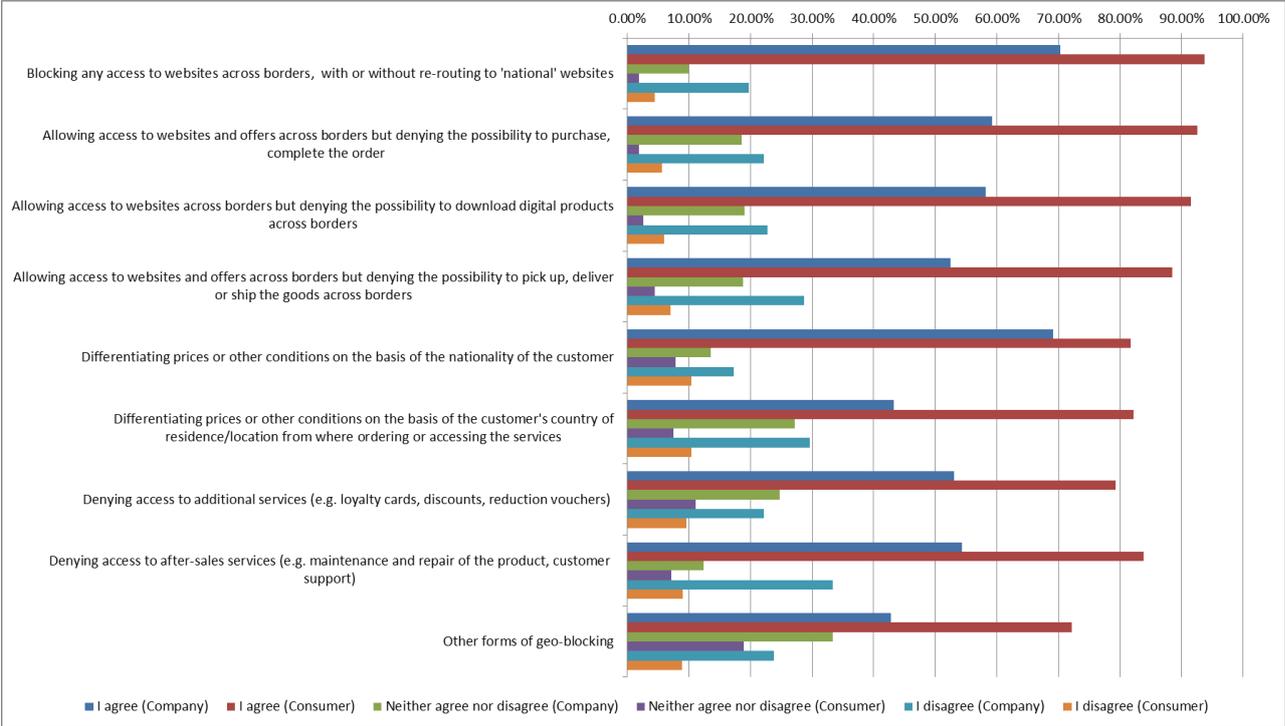
Across the different stakeholder groups responding to the consultation there is strong support for the general principle that all consumers and business should be allowed to purchase and access services from anywhere in the EU.

A number of stakeholders, especially from concerned business associations, have critically commented on the wide definition of geo-blocking in the public consultation. The majority of these respondents see geo-blocking as blocking on-line access to an offer based on the customers' location, which is separate for purchasing and delivery restrictions.

a. Significance of geo-blocking or other geographically-based restrictions

On the question on what forms of geo-blocking and other geographically-based restrictions that are considered to create significant obstacles in the single market, respondents generally agree that practices that either prevent access to offers or access to the actual good/service make up significant barriers. The views expressed regarding the extent to which geo-blocking practices constitute barriers in the single market are also reflected by the importance attributed to the different geo-blocking practices (Fig. 1).

Figure 1. Significance of different forms of geo-blocking¹



Consumers and consumer organisations

Four out of five respondents identified as consumers or consumer organisations agree that the forms of geoblocking listed above create significant obstacles to the single market. Barriers stemming from restricted access to websites are seen as the most significant. Although the questionnaire did not cover copyright-related restrictions, many individual consumers have highlighted that geo-blocking related to digital content is a specific concern (e.g. access to TV broadcasts or platforms for apps or audio-visual content).

¹ For presentation purposes the answer options "strongly agree"/"agree" and "strongly disagree"/"disagree" are presented

On qualifying the relevance of these barriers, consumers considered all of the listed types of geo-blocking practices to be highly significant (with 85-90% of the respondent classifying them as "important"/"very important"). Most significant are barriers blocking access to offers (>90%), while restrictions for digital goods/services (87%) are considered slightly more significant than non-digital goods/services (82%).

As for the reasons given by traders for refusing to sell or charging a higher price because of residence, about half of respondents (46%) did not receive any explanation. Only about one in ten respondents (11%) stated that they had asked for an explanation and in most cases received one from the trader for the discrimination based on residence. In about a quarter of the cases (27%), the consumer asked but did not receive any explanation from the seller as to why they refused to sell or charged them a higher price. In 16% of the reported cases an explanation was provided upfront by the trader.

Companies and business associations

Respondents from companies and business associations take a different view from consumers. Even though a clear majority (75%) of respondents believe that blocking access to a website creates barriers, more than half of the respondents believe that restrictions on the basis of delivery or payment issues create significant obstacles to trade.

A number of stakeholders from business associations and individual companies highlight the need to clarify what the implication would be for copyright/licensing issues in future initiatives.

When ranking the importance of the listed forms of geo-blocking, companies and business associations tend to see them as less important compared to consumers. However, two out of three respondents from companies consider that rerouting or refusal of access to a website to be "important" or "very important" barriers. Even if several company respondents argue that geo-blocking is positive for consumers as it forwards them to websites adapted to the customers' home market. About half of the company responses stated that disproportionate shipping costs or using a country specific format (e.g. addresses, postal codes, phone, etc.) are important barriers.

Businesses selling and buying goods and services received an upfront explanation from the seller in about one of every eight cases (14%), the same frequency by which an explanation was received as to why a sale was denied or a higher price was charged based on the place of residence/establishment. In a little more than one third of all cases (36%) the seller did not provide customers with any explanation, while just over a third of respondents indicated that they have never asked the seller for an explanation.

According to the seller's point of view, less than one in three customers (29%) are provided with an explanation for the use of geo-blocking or other geographically-based restrictions. Around a third of businesses (34%) clarify that they provide a full explanation upfront on their website, in publicly available material or in the shop. Less than a third (31%) of the respondents state that they have not been asked to provide any explanation, while traders providing an explanation upon the request of a consumer association seldom occurred (in just 6% of cases). It has to be noted, however, that only a very small number of replies to this questions were received.

b. Experience of geo-blocking or other geographically-based restrictions

i) Being the subject of geo-blocking or other geographically-based restrictions

Consumers and consumer organisations

When asked about their experience of geo-blocking or other geographically-based restrictions when shopping cross-border, the vast majority of consumers and consumer organisations (89.4%) confirm that they had been subject of geo-blocking.

The most common restrictions which consumers face, regardless of the economic sector or type of purchased goods and services are refusal to sell (including automatic rerouting), refusal to deliver, price difference when shopping cross-border and the refusal of a discount.

Consumers report that they are geo-blocked in the retail sector when attempting to purchase clothing, footwear and accessories, physical media (books), computer hardware and electronics. In the digital sector, consumers reported difficulties related to the inability to purchase or access streaming services, computer games and software, e-books and MP3s (although the questionnaire did not cover restrictions related to copyright or similar licencing practices such as in the sports sector). Further, the field of accommodation and leisure services also poses challenges. Consumers also experience geo-blocking when attempting to purchase airplane tickets, rent a car or when they wanted to access cultural and entertainment services. Some of the respondents specify that they have been geo-blocked when renting a car in another country. Moreover, customers also expressed dissatisfaction at being unable to access on-line gambling websites in other Member States.

Companies and business associations

Companies and businesses associations selling and buying goods and services experience geo-blocking to a lesser extent than consumers, with six out of ten businesses (63%) replying that they are subject to geo-blocking. In contrast, more than a third of the respondents (37%) submit that they have not experienced business-to-business geo-blocking or geographically- based restrictions in the course of their business.

Member States and national authorities

Most national public authorities agree with the forms of geo-blocking identified in the public consultation. Two authorities stress the need to define the scope of the initiative more precisely and make a clear case for the most problematic practices. One Member State gives similar examples of geo-blocking as those identified by the Commission.

Another Member State agrees with the categories identified by the Commission but emphasised the legitimate “supply side” reasons that prevent companies from delivering cross border (see under "V. Justifications for geo-blocking"). It points to the lack of clarity as to whether the initiative would address copyright related geo-blocking. Another Member State presents a strong opinion that copyright aspects should stay outside the scope of the initiative on geo-blocking. In addition, another Member State reports on cases of refused delivery cross-border concerning technical products, toys and homewares. A region of a Member States highlights the importance of portability of digital goods.

ii) Applying geo-blocking or other geographically-based restrictions

Companies and business associations

When asked about their experience of applying geo-blocking or other geographically-based restrictions slightly less than half of businesses (45%) submit that they have applied geo-blocking or other geographically based restrictions in the course of their business (in either a business-to-business or business-to-consumer context). However, only a limited number of responses from companies were received to this question. As the main reasons for the application of geo-blocking practices, most of the traders point out VAT rules, divergent national regulations, consumer protection laws and delivery costs. Others did so in order to comply with copyright and licensing restrictions, the requirements for fiscal reporting and auditing, due to their contractual obligations or business models. Others point towards differences in technical requirements within different Member States, avoidance of bureaucracy and legal disputes, and the aim to provide a better and tailored service to consumers. A few of them also include as a reason the compliance with laws on pricing and misleading advertising, recycling fees to sales transactions and fraud prevention. In all of their responses traders consider the mentioned reasons as justification for the application of geo-blocking.

From the position papers received, it is evident that companies consider some forms of geo-blocking to be good for consumers (e.g. rerouting to websites where goods are adapted to consumers home market). Most of the relevant responses consider geo-differentiation required under local legal compliance requirements (e.g. in terms of different technical, regulatory, legal and fiscal rules in different Member States).

V. JUSTIFICATIONS FOR GEO-BLOCKING

a) Situations when geo-blocking is not justified

The responses from stakeholders show that the majority of respondents believe that the listed practices cannot be a justification for geo-blocking or differential treatment based on residence, even if the views of consumers and those of companies show a larger discrepancy than under most other questions.

Consumers and consumer organisations

Both individual consumers and consumer organisations are opposed to the listed situations being used as possible justifications, especially in situations where delivery is easily accessible where the consumer is willing to pay additional costs (above 80%), when there is no additional cost or administrative burden (above 90%), or when paying with means of payment that are internationally valid and accepted (87%).

Companies and business associations

Among company respondents the replies are more evenly distributed between "justified" and "not justified". With regards to justifications relating to delivery, about half of the respondents consider differential treatment justified, while about a fifth of respondent take the opposite view. Especially in situations when a trader advertises the services/product in that country, or targets the country of the customer with a website, respondents from companies tend to be more accepting of not allowing any justifications. As a general point, many companies underline that each provider of goods/services should be free to decide the geographical scope of their operations and nothing should force them to extend their offer to markets where they have previously not been active. In addition to the public consultation, a number of companies and company associations provide examples on situations where they think that geo-blocking is justified. Differences on warranties, VAT, consumer rights, language requirements are repeatedly listed by companies and business associations as legitimate objective reasons for differential treatment.

Member States and national authorities

Public authorities tend to take the position that the listed practices should not be justified. Among the views presented in position papers it is argued that in some cases geographical price discrimination can give rise to overall economic/consumer advantages. But even when either supply-side or demand-based factors might justify price discrimination, respondents argue that it should not be justified to make consumers pay higher prices based on their willingness to pay, but only on the grounds of nationality or residence.

b) Objective factors justifying geo-blocking (beyond legal constraints)

The responses to the question, "what objective factors – beyond legal constraints – that could justify geo-blocking", reveal a disparity between stakeholders' perspectives. Consumers tend to take the line that no other objective reasons exist, while companies and business associations list numerous grounds for different treatment.

Consumers and consumer organisations

The overwhelming majority of responses from consumers take a general position against all forms of geo-blocking. However, a few individual replies identify some situations where differential treatment could be justified, such as unavailability for after-sale services or very high shipping costs in hard-to-reach areas.

Companies and business associations

Respondents from companies and business associations provide a number of reasons for differential treatment due to e.g. national difference in VAT, health and product safety rules, shipping cost, etc. The views expressed indicate that all current reasons normally invoked (see below) for geo-blocking are considered as legitimate. A number of respondents also take a more general line that companies should be free to set prices within different markets (sometimes referred to as "geo-tailoring"). Others mention the risk of hacking or cybersecurity concerns as a ground to deny access to certain countries. Some companies also refer to the gambling sector, where legal requirements require restrictions in terms of territoriality (e.g. denial of access to licensed gambling websites from consumers from other Member States; IP blocking of access to unlicensed gambling websites or websites based in other Member States).

Member States and national authorities

When asked about possible justifications for geo-blocking, most public authorities agree that nationality or residence alone cannot be considered as legitimate reasons for refusing to sell cross-border. However, several responses also suggest legitimate grounds for such a refusal that may occur in cross-border transactions, including: dispute resolution and after sales services; cost of delivery, security and fraud related reasons; differences in tax rates; different level of purchasing power in the Member State of the consumer and trader, and; different safety standards for products or services.

VI. POLICY RESPONSES

a) Elements of a policy response

Consumers and consumer organisations

When asked about elements of a policy response, the vast majority of individual consumers and consumer organisations strongly agree or agree to more transparency and rules banning certain business practices. Virtually all suggested elements of a policy response are supported by a large majority of respondents.

A large majority (94%) of the relevant respondents favour a ban on discriminatory blocking of access to websites. Nine out of ten (93%) respondents favour a prohibition of refusal to download digital products (such as software or video games). More than eight out of ten (between 84 and 87%) of respondents from this group are in favour of companies having the obligation to explain - either before the transaction or upon request - the reasons for the difference in treatment of customers based on residence/nationality. A similar ratio (between 71 and 87%) of respondents support a list of reasons that may never justify different treatment of domestic and foreign users or a list of reasons that may well justify different treatment. Almost nine in ten (87%) of the relevant respondents agree to rules banning ways and means of discriminatory geo-blocking and other restrictions. Furthermore, a vast majority favours policies requiring traders to obtain consent prior to automatic rerouting. Likewise, a clear majority (70 to 80%) of respondents favour rules requiring traders to accept cross-border transactions from users throughout the EU, either under conditions reflecting additional costs or in cases where users arrange the delivery themselves.

Consumer associations support the suggested EU policy responses, particularly a list of reasons which traders can or cannot use as ground for different treatment.

Companies and business associations

Across companies, opinions are rather divided. More than a half of the relevant respondents strongly disagree or disagree to rules requiring traders to accept cross-border transactions from users throughout the EU under the same conditions as those applied to users of the home country of the provider. Likewise, the majority opposes rules requiring traders to accept those transactions under conditions reflecting additional administrative costs. Rules requiring traders to accept those transactions if the users are willing to organise the delivery themselves are also opposed by the majority.

A relative majority of respondents agree on most policy proposals concerning increased transparency. Just above one in three respondents (35%) believe that "companies should have the obligation to make clear before the transaction the detailed, objective and verifiable reasons why they treat customers differently based on their residence or nationality", five in ten replies (49%) submit that "companies should have the obligation to explain upon request the detailed, objective and verifiable reasons why they treat customers differently based on their residence or nationality". Around a third of the replies (30%) agree to "rules including a list of reasons that may never justify treating domestic and foreign users differently", while around a quarter of the replies (25%) wants policy proposals covering "rules prohibiting traders to refuse the cross-border download of digital products (such as software or video games)".

Around half of the respondents (50%) agree to a policy banning the discriminatory blocking of access to websites. There is no clear majority for or against the other options.

Business associations are generally supportive of the aim to prohibit unjustified geo-blocking while at the same time highlighting the importance of contractual freedom. Many of them call for a clear definition of geo-blocking and what is regarded as unjustified. Some associations do not see a need for new legislation and point to the importance of enforcement of existing rules (Services Directive, Consumer Rights Directive, competition law).

Companies and associations from the gambling sector highlight the legitimate need to block access to websites of illegal operators (consumer protection and public policy reasons).

Some business associations support policy options where a consumer is prepared to organise delivery of a physical product himself, to oblige the trader to non-discriminatory treatment of customers from abroad. That would be under the assumption that this would be within the usual delivery area of the trader and on the same basis as domestic customers or those in the usual delivery area. Similarly, some companies acknowledge that the situation of unsolicited requests and if the trader's law applies is very different situation for a trader compared to active sales.

There is no clear majority across all groups of respondents as to whether respondents favour specific rules for online transactions or for physical purchases and orders.

Member States and national authorities

While most public authorities point to the need of effective enforcement of existing legislation (Services Directive, consumer *acquis*) several also support targeted instrument to address unjustified geo-blocking.

Most public authorities agree with the need to ensure greater transparency, in particular by allowing consumers to see differences in prices (e.g. by banning automatic rerouting). One Member State expresses strong views against obliging companies to disclose the reasons for geo-blocking upfront and considers that such a measure would place a disproportionate burden on businesses.

Public authorities vary as to the preferred method for addressing geo-blocking practices. Some support the concept of lists of justified or non-justified practices. Others prefer an open approach by which only examples of problematic practices would be provided in the legislation. One Member State points out to the risk that exhaustive lists quickly become outdated. Technologically neutral and principle based legislation is preferred. One public authority supports the option to delegate potential (additional) costs to the consumer whereby the trader has to justify the additional costs.

Some replies support more effective enforcement of the new rules by a combination of enhanced powers of the Commission and more effective cooperation between national competent authorities. Some replies invoke the need to strengthen the Consumer Protection Cooperation (CPC) network.

b) Exclusion of SMEs

When asked whether SMEs, in and particular micro companies, should be exempted, a third of all respondents favour an exemption, while two thirds would not exempt SMEs. Both the consumer and company respondents mirror these exact fractions (one third vs. two thirds). When asked under which circumstances SMEs should be exempted, respondents made several suggestions. Some respondents would accept an exemption only if their small nature practically impedes the offer of goods or services Union-wide, others suggested the use of a threshold/volume criterion based on e.g. the number of employees, company turnover, total revenue or the production volume. Others argue that an exemption would be needed only if the administrative impact would be too large. One business association expressly welcomes exemptions for small firms, however, not by means of a blanket exemption but on a case-by-case basis.

c) Best policy instrument

Consumers and consumer associations

When asked about the best policy instrument, consumers suggest very different approaches. Examples are the introduction of a genuinely free movement of digital and non-digital products within the EU, a removal of all restrictions to the free circulation of goods and an EU legal framework plus national implementation. Better enforcement and the possibility of fines are also mentioned. Overall, many respondents favour harmonised European rules on this topic. Others, however, would not favour a legislative response, suggesting that European Treaties would not allow an intervention to force sellers to be active in specific territories.

Companies and business associations

Companies showed equally divergent views as consumers. Some said there should not be any policy response. Others pointed out the importance of competition. Common rules facilitating cross-border trade are favoured by other respondents. Finally, non-legislative action or guidelines are mentioned as preferred options by several respondents.

Some business associations oppose the enactment of a list of justifications as it would not reflect the complexity of business models would never be comprehensive and soon be outdated.

Member States and national authorities

Only a limited number of replies to this open question were received, but several replies from Member States consider monitoring and enforcement by national authorities in combination with cooperation of national authorities as important. Divergent views are expressed as to whether the existing regime based on Art. 20 of the Services Directive is sufficient.

d) Effective implementation

Overall, the respondents favour almost all suggested ways to improve effective implementation. More than seven out of ten (72%) of the respondents support a monitoring and enforcement role for the European Commission as well as for national authorities. Similar numbers of respondents (70%) support a more effective cross-border cooperation mechanism between national authorities. More than a half of the respondents want alternative dispute resolution bodies to ensure implementation. The support is larger among consumers, with more than seven in ten (respectively 78%, 74% and 77%) to the first three enforcement options. Companies are less supportive of the suggested implementation mechanisms. However, half of the relevant company respondents support monitoring and enforcement by national authorities. As regards the other enforcement options, no majority can be identified among company respondents. When asked to specify, some suggest that the European Commission was best placed to take care of the enforcement due to the pan-European dimension of the problem. Others highlight reservations vis-à-vis the effectiveness of their national enforcement authorities. Additional respondents mention the role of courts. When asked about best practices, including self-regulation of companies, respondents argue either in favour of self-regulation or against it, pointing out that it would not achieve a real solution for consumers.

Member States and national authorities

Most responses from Member States and their authorities support improved enforcement by national authorities. More effective cooperation between national authorities is also welcomed by several Member States.

VII. MARKET IMPACT

a) Overall impact

Consumers and consumer organisations

A large majority (94%) of consumers believe the impact would be very positive or positive. Only a small fraction (4%) believes that the impact would be negative or somewhat negative. Consumers also highlight the opportunities and improved market access. Some argue that, due to increased offers, greater choice and competitive prices, they would buy more. Finally, respondents mention the beneficial impact on migrants and minorities as regards better cross-border access.

The opinions of consumer associations are more divided. All but one of the consumer associations see positively on measures to increase transparency, while a relative majority of respondents (44%) answer that “rules including a list of reasons that may never justify treating domestic and foreign users differently” and “rules banning ways and means of discriminatory geo-blocking and other restrictions” would have a very negative effect on market opportunities.

Companies and business associations

Among companies six out of ten respondents (64%) expect a positive impact on cross border e-Commerce, while similar numbers (59%, 58% and 55%) expect such impact on cross border trade generally, the economy and their business sector respectively. A negative impact on the economy, cross-border e-Commerce, etc. is expected by less than a quarter of the respondents representing individual companies (13% to 25%). Some associations submit that a prohibition of geo-blocking would reduce competition. Because of the *de facto* obligation to sell, only large traders would be able to comply with such an obligation and economically survive. Smaller traders would not be able to respond to these sales requests and if not competitive enough, this would lead to a concentration in the market. Only big traders would then survive, which would lead to less choice and offers to consumers.

Member States and national authorities

Most responses from Member States and their authorities invoke the principle of freedom to contract which should not be undermined by the new instrument on geo-blocking. They also point out that the legitimate considerations to address unjustified geo-blocking have to be weighed against the risk of putting additional burdens on businesses.

b) Impact of individual measures

Overall, a clear majority of all respondents see a very positive or somewhat positive impact on their activities. An overwhelming majority of respondents (79%) expect a positive impact in case rules are introduced banning ways and means of discriminatory geo-blocking and other restrictions. A similar number of (78%) of respondents expect a positive impact if rules are enacted that prohibit traders to refuse cross border download of digital products. More than seven in ten (73%) respondents expect a positive impact in case of enactment of rules banning the discriminatory blocking of access to websites. There is a clear majority of respondents that see a positive impact also as regards other possible measures such as more transparency i.e. information to the customer, rules requiring traders to accept cross border transactions under certain circumstances and rules including a list of reasons that may or may never justify different treatment.

No clear majority, however, was found as regards the expected impact of rules either specifically addressed at online or offline transactions respectively.

Consumers and consumer organisations

The degree of expected positive impact is even higher if one only looks at the consumer responses. An overwhelming majority of consumers (95%) said that they positive impact in case rules are in force banning discriminatory geoblocking and other restrictions. 88% of consumers see a positive impact if rules are enacted regarding cross border download of digital products. 92% expect a positive impact of banning the blocking of access to websites. Likewise, a clear majority of consumers expects a positive impact of measures on transparency, of requiring traders to accept certain cross border transactions and of a list of reasons clarifying different treatment respectively (81%, 64% and 80%).

Companies and business associations

Based on replies by companies, a majority (56%) expect a negative impact of rules requiring traders to accept cross border transactions under the same conditions as those applied to users of the home country of the trader. Likewise, more than a half (55%) state such negative impacts would have to be expected once rules were enacted that impose on traders to obtain consent of users prior to automatic rerouting. Half of the respondents forecast a negative impact if rules are created including a closed list of reasons that may justify different treatment. However, up to a quarter of companies provide – across possible measures – they are neutral as regards expected impact.

When companies were asked whether such impact would be mostly on the economy, cross border e-commerce, cross border trade generally or their business sector, a clear majority (62%) of companies did not to answer the question. The replies of those who answered are split among the four choices (31% economy, 29% cross border e-commerce, 23% my business sector, 17% cross border trade generally).

When respondents from the group of companies were asked about where an additional burden would be expected to be on, the replies are divided among the four options: respondents chose additional administrative compliance costs (30%), additional costs in the area of marketing or web design (22%), additional personnel costs (24%) and additional delivery costs (25%).

Member States and consumer authorities

Among individual measures listed in the public consultation all respondents from public authorities support rules including a list of reasons that may never justify different treatment of domestic and foreign customers (50% of replies indicate somewhat positive result, 50% very positive).

Three quarters of respondents are supportive of rules including a closed list of reasons that may justify different treatment of domestic and foreign customers, while one fourth is neutral.

Respondents are in general supportive of other individual measures listed, with the exception to rules requiring traders to accept cross-border transactions from customers from throughout the EU under the same conditions as those applied to customers of the "home" country of the provider, where a half indicate somewhat negative result. This is mirrored in the replies concerning the rules requiring traders to accept cross border transitions from customers from throughout the EU and to provide delivery cross-border if the customer is willing to organise themselves the delivery and cover the additional shipping costs. Half of the respondents would be against such rules.

VIII. CONCLUSION

The responses to the consultation show that there is overwhelming support for the general principle that consumers and business should be able to purchase goods anywhere in the EU. Across the board, regardless of their geographical location, the responses from consumers and consumer organisations expressed a general dissatisfaction with the current state of affairs. Companies, across various sectors, agree with the description of existing barriers in the single market while urging caution in introducing sweeping new measures seeking to address the situation. Member States also consider geo-blocking to be of high importance.

Regarding the different forms of geo-blocking and other geographically-based restrictions currently being practised a clear majority of respondents agreed to their general significance. Very few additional restrictions were brought up in the responses. Both from the perspective of consumers and companies the replies show a general discontent with the current state of fragmentation of the single market. However, on more specific issues the views of consumer and consumer organisations, on the one hand, and companies and business associations on the other, are somewhat divergent. Although concerned about existing barriers, companies and business associations were more accepting of the current state of affairs, attributing it to divergent legal regimes within different Member States. Consumers and consumer organisations expressed a view of principle that the prevalence of existing practices is an important obstacle to the single market.

The difference in the views expressed by consumer and companies becomes even more pronounced when considering the possible justification for allowing geo-blocking and geographically-based restrictions. Consumer and consumer organisation tend to qualify more of the listed practises as "unjustified", while companies, although more divided in their positions, tend to be more accepting of the number of objective factors that would justify geo-blocking. The replies also give voice to a concern, mainly stemming from companies but also public authorities, that the consultation's separation of "justified" and "unjustified" practices is vague and difficult to apply in practice. If future policy measures address these practises, many of the respondents from companies and business associations underline the need to clearly define - in a legally certain way - what is considered to be a "justified" or "unjustified practice". Similar concerns have been voiced by respondents from Member States which argue for a cautious approach, being wary that attempts to define justifications might in practice lead to unintended consequences or unacceptable infringements of the freedom to contract.

In terms of favoured policy responses to address the current situation, a vast majority of consumers and consumer organisations show support for increased transparency by preventing the blocking of access to websites. An equally large proportion also favours a prohibition to refuse downloading of digital products. Consumers also support a list of reasons which can never justify different treatment,

which is also the policy response consumer associations deem as appropriate. From the perspective of companies, a common thread is the emphasis on respect for contractual freedom. Even if the majority of companies support measures increasing transparency, many replies highlight the risk of introducing overly burdensome information obligations. At the same time a majority of company respondents oppose measures that would force them to accept cross-border transactions from users throughout the EU under the same conditions as those applied to users from the provider's home country. A majority of respondents from companies and business associations also reject potential policy responses that would require traders to accept transactions which come with additional administrative costs. They are divided, however, as regards transactions where the customers organise the delivery themselves.

With regard to ensuring effective implementation, there is strong support from consumers for all envisaged mechanisms, be it increasing the role of the Commission, national authorities or providing a better cross-border cooperation mechanism. Companies take a different view with none of the suggested mechanism getting support from a majority of the respondents.

Concerning the expected impact of measures to address geo-blocking, companies take a more reserved view, with a majority expressing concerns about the effect of having to accept cross-border transactions or requiring consumer consent before rerouting. Some business associations also warn that proposed measures would amount to a *de facto* obligation to sell, which could reduce competition, as small actors would not be able to respond to sales requests. Consumer organisations are supportive of measures on transparency and clarification of non-discrimination. They expect a positive impact of most of the suggested measures. Likewise, the vast majority of consumers expect a positive market impact, with some respondents expecting increased offers, greater choice and competitive prices leading to increased overall consumption.

IX. ANNEX

Further consultation activities

The Commission exchanged views with stakeholders in numerous meetings, in particular:

- Workshops with businesses, business associations and consumers associations in November 2015 (Brussels) and February 2016 (Amsterdam).
- Meetings with Member States in January 2016.