



# Association For Consumer Rights (Malta)

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## *Title of Resolution*

**Addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market**

## *Individual proposing the Resolution*

**Grace Attard ACR General Secretary**

## *Background information*

In these days of disruptive developments, industries – both manufacturing and services - are permanently changing, new sharing economy business models are emerging, and methods of trading are adapting accordingly. Social media and services are fundamentally influencing the development of new patterns of trading and buying goods. They have huge implications for companies and consumers alike.

The EU should bring existing and new legislation into line with new market realities. The digital revolution requires robust conditions to promote the Single Market in this new era. These conditions must be defined by an appropriate – new and/or reviewed - legislative framework that guarantees the rights of citizens and consumers. Moreover, companies should be encouraged to use digital tools and innovation

Addressing unjustified geo-blocking is a key issue linked to Cross-border Parcel Delivery Services.

## *Justification/current situation*

There are a number of well-founded reasons why companies, notably SMEs and micro-enterprises, may have for avoiding or refusing cross-border on-line trade or for adjusting prices and/or conditions as a result of differences between markets. These concern, among other things,

- different legal environments,
- further national requirements,
- additional transport costs,
- language requirements on pre-contractual information and
- backoffice requirements.

While there are often justified reasons for different treatment in terms of pricing or of conditions that arise, for instance, from remaining market fragmentation or differences between national markets, businesses as well as consumers will benefit from an open and competitive market leading to varied choices and better quality at fair prices.

### ***Proposals/Recommendations***

To date, however, the effect of legal provisions to encourage cross-border e-commerce remains limited. On the basis of far-reaching market studies and surveys of businesses and consumers, the Commission concludes that "where buying online has become normal for consumer, buying online cross-border remains the exception. Only half of the companies selling online do so cross-border"<sup>1</sup>

The summary of the 2015 public consultation on geo-blocking concludes that consumers and companies alike are generally unhappy at the current fragmentation of the Single Market.

Consumers have many complaints about cross-border trading, although further assessment is desirable. There is the urgent need to address consumers' complaints that cover a broad range of issues, such as:

- a lack of information,
- delivery restrictions or a refusal to deliver,
- the failure to provide justifications or explanations when services or goods are refused,
- rerouting,
- price differences,
- the refusal of certain credit cards,
- differentiation based on billing and delivery addresses and
- language requirements may be prohibitive.
- existing EU Directives are badly implemented or not implemented at all.

All of these factor and others undermine both market transparency and the desired level playing field.

- The existence of 28 industrial policies, as a national focus on industrial policy hampers EU-wide operations in business and in particular undermines SMEs' scope for cross-border operations.

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<sup>1</sup>

See the Impact assessment on geo-blocking and other forms of discrimination based on place of residence or establishment or nationality in Europe (COM(2016) 289 final, p. 2). However, the Commission rightly stated in its 2012 Communication on services that businesses are free to determine the geographic scope to which they target their activities within the EU, "even when selling online".

- Uncoordinated national policies with an obvious lack of uniformity, where appropriate, hamper cross-border planning. Unpredictable or arbitrary government measures add to further uncertainty.
- There are also substantial differences in transnational trading between sectors, bigger and smaller companies, and types of operators such as retailers or intermediaries and websites, while the volume of international on-line trading varies considerably among Member States.
- There is an urgent need for a level playing field for off-line and on-line trading. Consequently, the EU should focus not only on ending unjustified geo-blocking, but also on tackling the remaining obstacles in the Single Market that discourage or hamper traders from selling on-line and/or off-line across borders.
- The wording on laying down the applicable law – Article 1(5) states that the trader can "sell" just as he does at home, relying on his home-country rules – needs urgently to be formulated more clearly.
- Confidence among companies and consumers should be fostered through the parallel adoption of other legal provisions. Some of the most important such are a Regulation on parcel delivery<sup>2</sup> – to alleviate transport problems and reduce costs through fair competition that also includes social provisions – and that fully respects EU legislation in this area
- After-sale services (in cases of non-conformity, returns costs, options for compensation, etc.) are not specifically covered by the regulation and therefore are regulated by the 2011 Consumer Rights Directive. A reference should be added in the geo-blocking regulation to the relevant EU legislation that would apply. This warrants further consideration.
- Shipping costs and the cost of after-sales services due to national policies may unexpectedly turn out to be higher. A company obliged to deliver under all circumstances might find it difficult to meet its obligations in the light of unknown conditions

The European Commission and the Council need to put ambitious and well-defined legal provisions in place for a successful DSM in favour of consumers and companies, also as a prerequisite for creating a resilient European economy vis-à-vis the rest of the world. Such arrangements would also promote a positive image of the European Union

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<sup>2</sup>

The EESC is currently working on an opinion on the proposal for a Regulation on cross-border parcel delivery services that will complement the proposals put forward in this opinion.