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## PROPOSAL

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 26 May 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY  
OF THE IMPACT ASSESSMENT Accompanying the document proposal  
for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL on addressing geo-blocking and other forms of discrimination  
based on place of residence or establishment or nationality within the  
Single Market

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Delegations will find attached document SWD(2016) 174 final.

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Encl.: SWD(2016) 174 final



Brussels, 25.5.2016  
SWD(2016) 174 final

**COMMISSION STAFF WORKING DOCUMENT**  
**EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT**

*Accompanying the document*

**proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**on addressing geo-blocking and other forms of discrimination based on place of  
residence or establishment or nationality within the Single Market**

{ COM(2016) 289 final }  
{ SWD(2016) 173 final }

## Executive Summary Sheet

Impact assessment for the Proposal for a Regulation on addressing unjustified geo-blocking and other discriminations based on place of residence or nationality

### A. Need for action

#### Why? What is the problem being addressed?

Customers, notably consumers but also small businesses, show an increasing interest in shopping cross-border. However, they increasingly experience traders operating in other Member States refusing to sell to them or adapting their price as a consequence of the customer being from another Member State. In 2015, a Mystery Shopping Survey revealed that only slightly more than a third of attempted cross-border purchases were successful (37%). There may be good reasons for not selling cross-border (e.g. differences in consumer laws, VAT, bottlenecks in cross-border delivery channels etc.). Nevertheless, a significant number of restrictions may be unjustified.

#### What is this initiative expected to achieve?

The objective of the initiative is to ensure non-discrimination against customers in the Single Market. Several root causes of such company behaviour are addressed in parallel e.g. Commission initiatives (digital contracts, parcel delivery, extension of VAT MOSS) under the DSM- and SMS Strategy. The current initiative focuses in particular on situations in which there is no objective reason for a different treatment between foreign and domestic customers.

#### What is the value added of action at the EU level?

The problem is typically cross-border in nature and concerns all Member States. Presently, Member States and their national enforcement authorities cannot rely on a sufficiently clear legal framework to ensure enforcement of the current provisions. Therefore, for reasons of scale and expected effects the objectives can be better achieved by action at the EU level.

### B. Solutions

#### What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Increased transparency (option 1) will not achieve the objective. A ban on blocking access to websites and on automatic rerouting unless active consent is given (option 2) combined with a requirement for explanation in exceptionally justified cases of such blocking will address a part of the problem. The preferred option (option 3) is focused on identifying specific situations in which geo-discrimination cannot be justified (for tangible goods, if the customer arranges for cross-border transport; for services which take place in a physical location where the trader conducts its business, and for electronically delivered services where no delivery problem persist). Option 4 consists of setting up an additional list of justifications for geo-discrimination in order to clarify the principles under Article 20 (2) of the Services Directive. This was rejected due to its complexity. Option 5 included a requirement that companies ship tangible goods cross-border and best achieved the objective, but was rejected on the grounds of imposing disproportionate costs on businesses.

#### Who supports which option?

Option 1 is supported strongly by consumers but some businesses have reservations. Option 2 is clearly supported by consumers and agreed by businesses. A clear majority of consumers support option 3, while businesses are divided, with some signalling opposition and some showing acceptance, e.g. in the case of transactions where the customers organise delivery themselves. Option 4 is requested by some businesses in order to improve legal clarity, while

others express resistance. While consumers in principle support option 5, it is strongly opposed by businesses.

### **C. Impacts of the preferred option**

#### **What are the benefits of the preferred option (if any, otherwise main ones)?**

Based on the available data, e.g. example distance selling of electronic goods, one of the most popular online sales categories, the net effect of lifting geoblocking restrictions imposed by companies on cross-border sales can be estimated to be an increase of about 1.1% of the total market size (total sales). Most of that trade would come at the expense of a reduction in domestic purchases, mostly in domestic offline purchases. The net trade expansion effect is estimated at 0.4% only. As a corollary, price decreases are estimated at -0.5% offline and -0.6% online, on average across the EU. No price increases are forecast for any Member State. If similar effects occur for all tangible goods, the total EU28 consumer surplus increase could be 0.8% on average for the EU28, with variations across Member States. Nevertheless, one has to keep in mind that the baseline will be affected by the effectiveness of the related regulatory initiatives.

#### **What are the costs of the preferred option (if any, otherwise main ones)?**

Abandoning automatic rerouting and requesting approval before rerouting visitors entails one-off compliance costs but would concern only a small share of large websites (around 2% of websites which account for 7.5% of cross-border traffic). Other compliance costs would only occur at a very limited level, since traders would simply treat foreign customers as national customers, They could recoup incurred additional costs, such as relating to payment systems or other costs, in a transparent manner to the extent to which they are objectively justified..

#### **How will businesses, SMEs and micro-enterprises be affected?**

This measure will cover all business, including SMEs and micro-enterprises. The only extra burden would possibly be related to a small extra charge for payment services and the need to identify the VAT rate in the customer's country in the case of digital sales (the registration is handled through VAT MOSS). Under the new VAT proposal, this information will be easily available. However, for companies which are exempted from VAT according to national legislation, this would be a considerable burden. They are therefore exempted from the equal treatment obligation. The total exclusion of micro and small businesses would not be a viable option.

#### **Will there be significant impacts on national budgets and administrations?**

Enforcement will be carried out by already existing structures coordinated under the CPC Regulation in respect of consumers so no new organisation costs are foreseen. There were roughly 1500 complaints over eight years (2007-2015) that have come to the Commission's attention, but the Commission estimates the consumer concerns to be much higher. The Regulation is expected to clarify the obligations of traders and deter bad practices. The increase in the annual workload of Member States is therefore likely to remain limited.

#### **Will there be other significant impacts?**

No. The measure applies to all traders selling to EU customers, thus not affecting international competitiveness.

### **D. Follow up**

#### **When will the policy be reviewed?**

A comprehensive evaluation should take place five years after entry into force.