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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Implementation of the DSM e-commerce initiatives: Taking stock and way forward
- Information from the Commission

Delegations will find attached a background note prepared by the Commission for the COMPET Council of 27 November 2018, on the AOB item *Implementation of the DSM e-commerce initiatives: Taking stock and way forward*.

Implementation of the DSM e-commerce initiatives: taking stock and way forward -

Information from the Commission

State of play of the DSM e-commerce measures

On 25 May 2016, the Commission presented a comprehensive package of measures to boost the potential for cross-border e-commerce in Europe, as a prerequisite for the full functioning of the Digital Single Market (“DSM”), the DSM Strategy. The aim was triple: (i) Ensuring better access to goods and services offered online; (ii) Building trust for consumers and greater certainty for businesses; and (iii) Reducing transaction costs and administrative burden for businesses when trading online across borders. Taken together, the proposed measures will help to increase trust and contribute to reducing consumer detriment, whilst providing for greater legal certainty for businesses. The DSM initiatives have already provided tangible benefits to European citizens, including the end of roaming surcharges and the portability of digital content.

➤ Adopted key DSM e-commerce measures

Key e-commerce measures (adopted by co-legislators)

- Regulation addressing unjustified **geo-blocking** and other forms of discrimination based on nationality, place of residence or place of establishment within the Single Market.
- Regulation on cross-border **parcel delivery** services.
- Package on **Value Added Tax** for e-Commerce.
- Review of Regulation on **Consumer Protection Cooperation**.
- Revised Directive on **Payment Services** and **Payment Accounts** Directive

Following the adoption of the above measures by the co-legislators, they now need to be implemented rigorously so that their benefits become tangible for citizens and businesses. If successful, they will offer better access to goods and services online to citizens across the EU. Member State administrations will have an important role in ensuring that the new rules are applied, and will be better equipped to face the challenges encountered in cross-border enforcement.

To assist Member States in this process, the Commission is already planning to undertake a series of practical support measures. Where required, preparations of implementing and/or delegated acts are ongoing. In addition, the Commission will provide detailed support through regular meetings and training events in existing expert groups and Member State committees. This includes practical support on necessary updates of national IT systems in support of VAT and customs, in preparation of the one-stop-shop in January 2021. It also includes the preparation of coordinated IT cooperation tools in support of the consumer protection cooperation network and a website to enable the price transparency measures under the parcel delivery regulation. In addition, various communication initiatives are also planned at key dates in the implementation process.

➤ Pending key DSM e-commerce measures

Key e-commerce measures (pending)

- Proposals on supply of **digital content** and on **sale of goods**.
- Legislative proposals under the **New Deal for Consumers**.
- Proposed Regulation on promoting **fairness and transparency for business users of online intermediation services**.

There are a number of additional pending proposals, the swift adoption of which is crucial to support e-commerce in Europe. Many traders have identified legal fragmentation in the area of consumer contract law as a main obstacle to cross-border e-commerce. The targeted full harmonisation approach put forward by the Commission, with the two proposals on the supply of digital content and on sales of goods, should address this concern. The legislative proposals for a new deal for consumers aim to modernise and fill gaps in the current consumer acquis, in particular as regards digital economy, and to, better protect consumers against breaches of their rights. The proposed regulation on promoting fairness and transparency for business users of online intermediation services is another important element to ensure a fair, open and innovation-friendly digital environment.

With the sector undergoing constant change, market monitoring to respond to emerging trends remains critical. This is recognised in the initiatives adopted, where, in many cases, a review process is foreseen. By March 2020, the Commission has to present a review of the Geoblocking Regulation to assess the impact of the Regulation on e-commerce, and to assess whether the scope should be extended. Studies will be launched in 2018/2019 to support this review. By May 2020, a review has to be presented of the parcel delivery regulation, to identify other actions needed to improve the single market for parcel delivery services. A study on the development of cross-border e-commerce through efficient parcel delivery is underway. Likewise, in terms of VAT, effectiveness of measures already taken will have to be assessed and remaining obstacles identified.

This review process cannot ignore broader market trends and rapid technological change, such as the emerging use of artificial intelligence or blockchain technologies in the e-commerce sector as well as the growth of omni-platform and omni-device options, or the prevalence of personalised pricing and targeted advertising, to name a few. The creation of the "Observatory of the Platform Economy" in April 2018 will provide important input to this.

From a competition perspective, the e-commerce sector inquiry, concluded in May 2017, confirmed the need for a targeted enforcement of the EU competition rules focusing on the most widespread business practices that have emerged as a result of the growth of e-commerce and that may negatively impact competition and cross-border trade. This is ongoing in close cooperation with national competition authorities to ensure a consistent application of the EU rules. In addition, given that the Vertical Block Exemption Regulation expires in May 2022, a careful analysis is required to identify any necessary changes to respond to market trends and technological changes.

Geo-blocking Regulation: effective implementation and enforcement

The Geo-blocking Regulation¹, which entered into force on 22 March 2018, will start applying in the European Union as of 3 December 2018. This Regulation marks the end of unjustified geo-blocking in Europe which has been an important source of disappointment for EU consumers and adds another building block of the Digital Single Market delivering concrete benefits for Europe's citizens and businesses. It is an important step forward for e-commerce in Europe and together we have to do all that is necessary to ensure a timely implementation and enforcement of this Regulation.

Thanks to the Geo-blocking Regulation:

- Consumers will not be **automatically rerouted** to another version of the sought website;
- Consumers will not be denied the possibility to **complete an order or to purchase goods** when accessing a website from abroad;
- Traders will not be allowed to offer **different prices and conditions** depending on the nationality, country of residence or location of the customer;
- Customers will not be denied the **possibility of using their credit card** as a result of their nationality, place of residence or place of establishment, the location of the payment account, the place of establishment of the payment services provider or the place of issue of the payment instrument.

➤ Member States' time for action

Member States' necessary actions:

- **Designation** and **notification** to the Commission of the relevant enforcement bodies.
- **Designation** of bodies providing practical assistance to consumers.
- **Adoption** and **notification** to the Commission of the measures applicable to infringements of the Regulation.

¹ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC

It is highly important that Member States take all necessary measures as a matter of urgency so that the benefits of the Regulation are made available to EU citizens, and businesses enjoy smooth trading conditions. There is a reputational risk for both the EU and Member States if the necessary preparations are not done in time which needs to be avoided.

In particular, Member States must designate bodies entrusted with the enforcement of the Regulation and bodies which will provide practical assistance to consumers. Member States are reminded that the Geo-blocking Regulation falls within the scope of the Consumer Protection Cooperation Regulation². This means that cooperation mechanisms at EU level between national consumer authorities will also cover unjustified geo-blocking cases. Hence, Member States must inform the Commission about the designation of their national competent authorities for the Geo-blocking Regulation.³ Additionally, Member States may take this occasion to communicate to the Commission the body or bodies responsible for the enforcement of the Geo-blocking Regulation vis-à-vis business-to-business transactions as well as those responsible for providing assistance to consumers.

Furthermore, Member States must set out effective, proportionate and dissuasive measures applicable to infringements of the Regulation, which they must communicate to the Commission.

Until the date of circulating the present document, and already less than 3 months before the start of application of the Regulation, the Commission has not received official notification from any Member State about the designation of the necessary authorities or the adoption of the measures applicable to infringements. Member States are now requested to take the necessary actions.

➤ Commission's actions

² Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)

³ This can be done by sending a letter to the attention of the European Commission, Directorate General for Justice and Consumers, Unit E.3. - Consumer Enforcement and Redress.

The Commission is committed to assist traders, citizens and Member States to fully grasp the benefits and obligations stemming from the new rules. The Commission services have issued a detailed Questions & Answers document on the Geo-blocking Regulation in the context of e-commerce, which is attached to this note.⁴ This document aims at providing practical guidance on the main provisions of the Geo-blocking Regulation in view of its entry into force and the more general evolution of certain aspects of the EU e-commerce framework. The document is addressed to traders who need to ensure compliance with the Regulation through adapting their commercial practices, and to consumers who need to know the changes brought by the Regulation and their impact on their everyday purchases and to Member States who need to ensure the enforcement of the Regulation.

The Commission is closely monitoring the implementation and enforcement of the Geo-blocking Regulation. In this regard, before 3rd December, the Commission will organise a workshop with the Consumer Protection Cooperation authorities to address remaining questions. There will also be an agenda item dedicated to the implementation of the Geo-blocking Regulation in one of the forthcoming Expert Working Group meetings on the Services Directive. The Commission is also developing an enforcement and monitoring plan for the period after the start of application of the Regulation. Finally, several communication actions are being envisaged. The Commission plans to actively communicate the changes brought by the Geo-blocking Regulation and to engage in discussions with relevant stakeholders associations.

The Commission looks forward to continue working with Member States to ensure that Europe's citizens and businesses enjoy the concrete benefits of the Geo-blocking Regulation. Accordingly, Member States' expeditious actions for their compliance with the obligations set out in the Geo-blocking Regulation is expected, including the designation and notification to the Commission of the relevant enforcement bodies, as well as the designation of bodies providing practical assistance to consumers, and the adoption and notification to the Commission of the measures applicable to infringements of the Regulation.

⁴ The Questions & Answers document will shortly be available in translation in other EU languages and accessible via <https://ec.europa.eu/digital-single-market/en/news/geo-blocking-regulation-questions-and-answers>

Enclosed:

- 1) Questions & Answers on the Geo-blocking Regulation in the context of e-commerce
- 2) Implementation timeline of adopted measures related to e-commerce

Implementation timeline of adopted measures related to e-commerce	
13.01.2018	Date of application of revised Payment Services Directive
20.03.2018	Date of application of Regulation on ensuring crossborder portability of online content services
22.05.2018	Date of application of Regulation on cross-border parcel delivery services
03.12.2018	Date of application of Geoblocking Regulation
01.01.2019	Entry into force of VAT for e-Commerce simplification measures for intra-EU sales of electronic services
01.01.-30.06.2019	First collection of data on parcel delivery service providers (under Regulation on crossborder parcel delivery services)
31.03.2019	First publication of parcel delivery tariffs (under Regulation on crossborder parcel delivery services)
31.07.2019	First affordability assessment of parcel delivery services (under Regulation on crossborder parcel delivery services)
17.01.2020	Date of application of Regulation on Consumer Protection Cooperation
23.03.2020	Date of application of Geoblocking Regulation passive sales provision (Art 6) to agreements compliant with relevant EU and national competition law, concluded before 02.03.2018
01.01.2021	Entry into force of VAT for e-Commerce measures to broaden scope of one-stop-shop (OSS) beyond the current Mini One Stop Shop (MOSS), elimination of VAT exemption for small consignments, and administrative cooperation provisions