

# Digital Single Market: Proposals on E-commerce

On 25 May 2016, the European Commission tabled a three-pronged plan aimed at boosting e-commerce in the EU. This is part of the Commission's wider strategy to create a "Single Digital Market" in the EU. If the plan is implemented, businesses can expect enhanced regulatory oversight over cross-border online trading both at national and EU level.

## Summary

The European Commission issued a new Digital Single Market strategy on 6 May 2015 (the "**Strategy**"). The Strategy laid out 16 key initiatives to create a true single, free digital market for both consumers and businesses regardless of nationality and / or place of residence.

As part of the Strategy, the European Commission has tabled proposals which it says will boost e-commerce in the EU. The proposals address geo-blocking and geo-discrimination, cross-border parcel delivery and consumer protection.

## (1) Geo-blocking

Geo-blocking is an online practice that prevents or limits access to goods or services to consumers based on their geographic location. Geo-discrimination occurs when the same goods or services are offered to consumers on different terms based on their geographical location.

The principle of non-discrimination is already established under the Services Directive but it has been difficult to apply in practice partly because the legislation passed under this Directive has so far been sector-

specific. The proposed regulation on geo-blocking is aimed at (i) providing legal certainty about which practices are permissible and which ones are not and (ii) dis-incentivising traders from discriminating. The proposal covers three main elements:

### Sale of products and services

- The proposal defines three situations where geo-blocking or geo-geographical discrimination will not be permitted except where a strict national / EU legal requirement obliges a trader to block access to the offered products or services:
  - Sale of products without delivery (i.e. foreign consumers should be entitled to delivery in the country of the trader in the same way as local consumers).
  - Sale of electronically supplied services (e.g. cloud services and data/web hosting). The application of this prohibition will be delayed until mid-2018.

## Key features

- Prohibition of certain geo-discriminatory practices.
- Enhanced regulatory oversight on parcel delivery prices.
- A co-ordinated approach to the enforcement of consumer rights.
  - Sale of services which are supplied in the trader's premises or in a physical location where the trader operates (e.g. concert tickets).

### Access to websites

- Blocking access to websites or the use of automatic re-routing without the customer's prior consent will be banned.

### Non-discrimination in payments

- Discriminatory payment methods based on consumers' geographical locations will not be permitted.

The geo-blocking proposals do not cover services which are or will be subject to sector-specific legislation (i.e. transportation services, retail financial services and audiovisual services) or which are not easily traded across borders.

Member States will be required to designate one or more bodies to secure compliance with the Regulation.

## (2) Parcel services

Inconvenience and high prices prevent many traders / consumers from buying and selling online. The Commission has, so far, held back from regulatory intervention in the parcel delivery services market. To drive growth and competition, the Commission has proposed new regulations to:

- increase price transparency and regulatory oversight over cross-border parcel delivery services. Parcel delivery providers with 50 or more employees or which operate in more than one EU country will be required to provide their national regulators with basic operational information including prices for certain cross-border products;
- introduce greater price transparency through the publication of domestic and cross-border prices for basic services offered by universal service providers; and
- require universal service providers to offer transparent and non-discriminatory access to multi-lateral cross-border

agreements (including fixing cross border terminal rates).

National regulatory authorities of Member States will be responsible for collecting the relevant information from service providers for publication on an EU price webpage within strict timelines. The Commission has indicated that, if necessary, legal instruments may be put in place to ensure compliance.

## (3) Consumer protection

The European Union looks to the Consumer Protection Cooperation Regulation ("CPCR") when addressing breaches of consumer protection rights in more than one country. However, the digital market has significantly developed since the CPCR came into force and only a limited number of national enforcement authorities are equipped to effectively address online breaches.

The Commission has therefore proposed a revision of the CPCR to give national authorities enhanced investigatory and enforcement powers and to streamline administrative systems for enforcement within the EU. In particular, national authorities will be able to:

- co-operate and share resources to tackle serious large-scale breaches affecting customers across borders;
- order the take-down of websites containing scams pending completion of an investigation;

- track financial flows to detect the identity of the perpetrators of cyber / digital scams; and
- check if websites geo-block consumers or offer after-sales conditions infringing EU rules.

On 25 May 2016, the Commission also published updated guidance on unfair commercial practices. The current regime is governed by the Unfair Commercial Practices Directive ("UCPD"). The UCPD is the main EU legislation regulating misleading advertising and other unfair practices in business-to-consumer transactions. The updated UCPD guidance will not change the existing legislative framework. However the revised guidance aims to provide further clarity on how court cases and enforcement decisions may apply in the developing e-commerce sector.

Enforcement of consumer laws will remain within the competence of Member States. However, new procedures will be put in place to permit closer co-ordination with respect to harmful practices concerning a large majority of Member States.

## Timing

The e-commerce proposals and regulations must be approved by European Parliament and the European Council prior to becoming effective. The timing of such approvals has not been confirmed.

The Commission's proposals on e-commerce were presented alongside a proposed update to the Audiovisual Media Services Directive.

## Comment

The Commission states that its proposals have been developed in a manner that will limit additional regulatory and administrative burden on businesses.

With respect to geo-blocking, the Commission emphasizes that the proposed Regulation does not create an obligation to sell or deliver across Europe, but rather clarifies an already existing prohibition on discrimination on the basis of nationality or place of residence. On parcel services it has excluded "small" parcel delivery services providers from the proposed disclosure requirements. No additional legal obligations have been imposed on businesses in the proposed revision to the CPR.

The real impact of these proposals on businesses should become clearer when the draft legislation becomes available.

## Links:

[http://europa.eu/rapid/press-release\\_IP-16-1887\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1887_en.htm)

[http://europa.eu/rapid/press-release\\_MEMO-16-1896\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-1896_en.htm)

[http://ec.europa.eu/justice/consumer-marketing/files/ucp\\_guidance\\_en.pdf](http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf)

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