



Position Paper

EU Commission Geo-blocking Regulation

Final August 2015

Mission

EMOTA's¹ main goal is to assist policy makers in removing any barriers to cross-border trade². EMOTA's commitment to a barrier free EU Single Market is long standing and can be traced across all our positions and actions.

Key messages

- EMOTA supports the EU Commission focus on removing the barriers to the Single Market
- EMOTA believes that the current Geo-blocking proposal is disproportionate and burdensome for eCommerce
- EMOTA calls for a comprehensive revision of the Geo-blocking Regulation

eCommerce in Europe

eCommerce has grown tremendously over the past decade, in many markets by double digit figures. Many of the reasons for this growth can be explained by the peculiarities of eCommerce. Consumers can see the products on websites, read reviews and tests via different channels, buy and pay online and get the products delivered at their homes. The same peculiarities also mean:

- In web sales, you do not physically see the customer and transactions will be based on electronic data
- The web sales are governed by a dedicated consumer EU law, which is not fully harmonised
- The web shop has to respect also the law and language of the consumer
- In web sales, products have to be delivered cross-border, with the costs and additional efforts involved
- In web sales, products cannot be delivered in countries where the product has no service centre

Geo-blocking and eCommerce

Geo-blocking is the term used for blocking access to a website or page on the basis of IP address, which is usually geographically defined. It is currently used by web shops for a number of valid reasons, most of which are beyond the web shop's own control. You will find some examples of situation where geo-blocking is used below.

Today's discussions on geo-blocking in eCommerce are often confusing and mixing geo-blocking (IP address based access to web content) with blocking of eCommerce transactions based on physical address. For example, payments can be refused because the bank does not accept a payment method from a specific country or delivery addresses are refused because the logistics company does not deliver in a specific country or region.

EMOTA recommendations for the EU Commission Geo-Blocking Regulation:

- **Article 4** of the proposed Regulation introduces **an obligation to sell** to non-domestic consumers. EMOTA strongly objects to such an approach and considers that the wording of Recital 14, which outlines the conditions for access to products and services, is not sufficient to prevent an obligation to sell. EMOTA calls on the EU Parliament and Council of Member States to clarify that traders are free to choose with whom they enter into a contract and that numerous aspects force the trader not to sell into certain countries.

¹ EMOTA, the European eCommerce and Omni Channel Trade Association, is the European level umbrella federation representing online and distance sellers across Europe. The main mission of EMOTA is to promote eCommerce and Distance Selling and help policy makers remove any barriers to cross-border selling. Transparency register N° 11251212351-96



- Article 4 together with Recital 18 implies that the seller is required to sell to the non-domestic consumer “**under exactly the same conditions, including price and conditions** relating to the delivery of the goods, as similar customers who are residents of the Member State of the trader”. EMOTA calls on the EU Parliament and Council to clarify that price differentiation is justified under a number of circumstances and traders are free to decide the conditions under which they sell their products and services.
- The EMOTA’s legal counsel and feedback from its Members indicates that **Article 1.5 will not be sufficient to protect traders from the requirement to comply with the rules applicable in the country of the non-domestic consumer** (Rome I Regulation Article 6.1). Should the EU Parliament and Council consider the proposal proportionate and justified, the proposal should be further clarified with respect to the applicable rules to the transaction and reflect beyond any doubt that the seller’s law applies.
- **Recitals 15, 16 and Article 3.2** introduce an **explicit consent requirement for the redirection of consumers** which will lead to unnecessary additional clicks for the consumer, spoiling the experience, and leading to higher costs for the traders. We recommend instead the implementation of an opt-out mechanisms for re-routing and further clarifications of the terms “redirecting” and “version”.
- The obligation not to discriminate **when accepting payments (in Article 5) is unclear** in order to ensure and it may force traders to implement costly payment solutions for non-existing sales or that it does not accidentally capture other services such as card based micro-credits offered by third parties (e.g. same brands of payments).
- The ban on uncompetitive clauses in Article 6 is too broad and risks to void the entire contract, which would lead to unnecessary losses for traders. We urge the EU Parliament and Council **to clarify that only the clauses which are deemed unfair/illegal and impose unnecessary sales restrictions should be void.**
- Traders risk to be forced to register for VAT in the country of the consumer, which will be costly and cumbersome. The EU Commission explains that as long as the seller is not involved in the delivery the obligations will not apply. EMOTA’s legal counsel pointed to the distinctions that in the case of online sales both the sale and the consumption will take place cross-border resulting in an unclear situation.
- EMOTA recommends **the exclusion of the B2B contracts from the scope** of the Regulation, currently found under **Article 2 c)** in order to avoid significant costs and increased legal uncertainty in B2B relations.
- EMOTA is concerned of the high costs that a possible **translation requirement** could entail if sellers are forced to provide justifications for restrictions in the consumer’s language as it currently results from **Article 3.4.**

Examples

Applicable law, equal access to offers: Lack of sufficient clarity could result in the applicability of the consumer’s law, sellers should be free to decide how to target the consumers

Provisions: Recitals 21, Article 1,5, Article 3 and Article 4

a) A small web shop selling food supplements does not have the resources to adjust the products and labelling to conform different national laws. The allowed levels in, say a vitamin sports shake are different from the Netherlands compared to Denmark. Selling the Dutch shake in Denmark will be illegal, and the shop has not the means to adjust the vitamin contents to the Danish requirements. He decides to geo-block and only sell his vitamin shake where it is allowed.

Should the web shop not be allowed to geo-block and be forced to sell to the consumer as “a local”, a consumer could claim that the seller has envisaged from the start to sell to all consumers regardless of where the consumer has his/her residence and therefore the seller should have envisaged to apply the mandatory consumer protection rules applicable to the respective consumer.



b) A web shop in Rome is very successful in Italy and decides to expand its market to France. This means an important decision for the web shop. It will for example have to spend many resources to French search engine optimisation. Without it, it will not be 'discovered' by French consumer on internet searches. Furthermore, it will have to translate the webpage in French, develop a French marketing campaign, ensure that documentation is available in French, hire a French speaking customer representative, etc. In order to make an impact in the French market, he offer special offers for French customers. He will use IP geo-location to ensure that customers based in France will receive these special offers.

c) A web shop in Greece sells high end electronics. In case of problems with these products, the electronics company has a service centre based in Athens. The web shop considers to sell in Romania, but realises that the electronics company does not have a service centre in Romania. This means that customers with a product problem will have to return the goods to Greece for repair. Looking at the tremendously high cross-border parcel delivery costs, the web shop realises that sales to Romania are not commercially viable. He decides not to take orders from Romanian customers

Explicit consent re-routing: Lack of sufficient clarity around the concept of re-routing/re-directing could lead to additional burdens for sellers and consumers

Provisions: Recitals 15, 16, Article 3.2

A webshop in Brussels automatically re-directs consumers to the "correct" language version of the website, based on the IP address (an IP address from Flanders would in 99% of the cases correctly indicate that the respective consumer wishes to access a dutch webpage). According to the EU Commission proposal the web shop would now have to ask for consent before implementing this measure, creating additional clicking requirements for the consumers, creating additional steps before the consumer can access the page/product required. This will result in lower sales because of increased consumer frustration.

Discrimination in payments: An obligation to not discriminate in payments will result in higher costs for online sellers.

Provisions: Recitals 24, Article 5

A web shop offering Maestro in Germany is required by the Regulation to offer Maestro as a payments option to all consumers across Europe. The web shop does not process payments by themselves but via a payments processing company. Being forced to take a contract with a payments company for all of Europe instead of just domestically will result in higher costs regardless of whether or not there will be any purchases made from the other countries.

VAT in cross-border sales: will traders be forced to register in the country of the consumer?

Provisions: Recitals 18, Article 1, Article 4

A web shop based in Malmö, Sweden starts selling Swedish design furniture to Spanish consumers.

If the trader would "openly" sell to Spain and would reach the level of €35,000 in sales, he is obliged to register in Spain for VAT. It means he will have to present himself to the Embassy of Spain in Stockholm and to the authorities in Madrid, he will have to appoint a recognised VAT consultant in Spain and open a Spanish bank account. For the latter, he will have to legally establish the company in Spain.

According to the EU Commission's Geo-blocking Regulation, the fact that the seller would be aware that he/she sells to a foreign consumer, the payment being made not locally (as it would be the case with an offline retailer) but from the consumer's country and the consumption taking place in the consumers country, would have no effect on the seller's obligations, regardless the level of sales. EMOTA fears that the EU Commission's interpretation of the VAT Framework in this case would be "forced" and could result in unwanted consequences in terms of competition and enforcement of VAT rules.



B2B sales: could result in high legal uncertainty for traders

Provisions: Article 2 c)

A **Trader D** will be forced to sell to **Trader G** regardless of whether or not the Trader D has valid reasons to sell via a separate distribution channel to the territory of Trader G. The support mechanisms and after sales services will require modifications in order to serve a less predictable order stream.

Justified bans: an obligation to display the ban in the consumer's language?

Provisions: Article 3.4

A trader will be forced to anticipate where all consumers can land on his/her website and in case a legal restriction bans the sale of the product, provide the consumer with the justification in his/her language. The translation costs will be very important. The liability risk linked to translation issues will also be important.

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