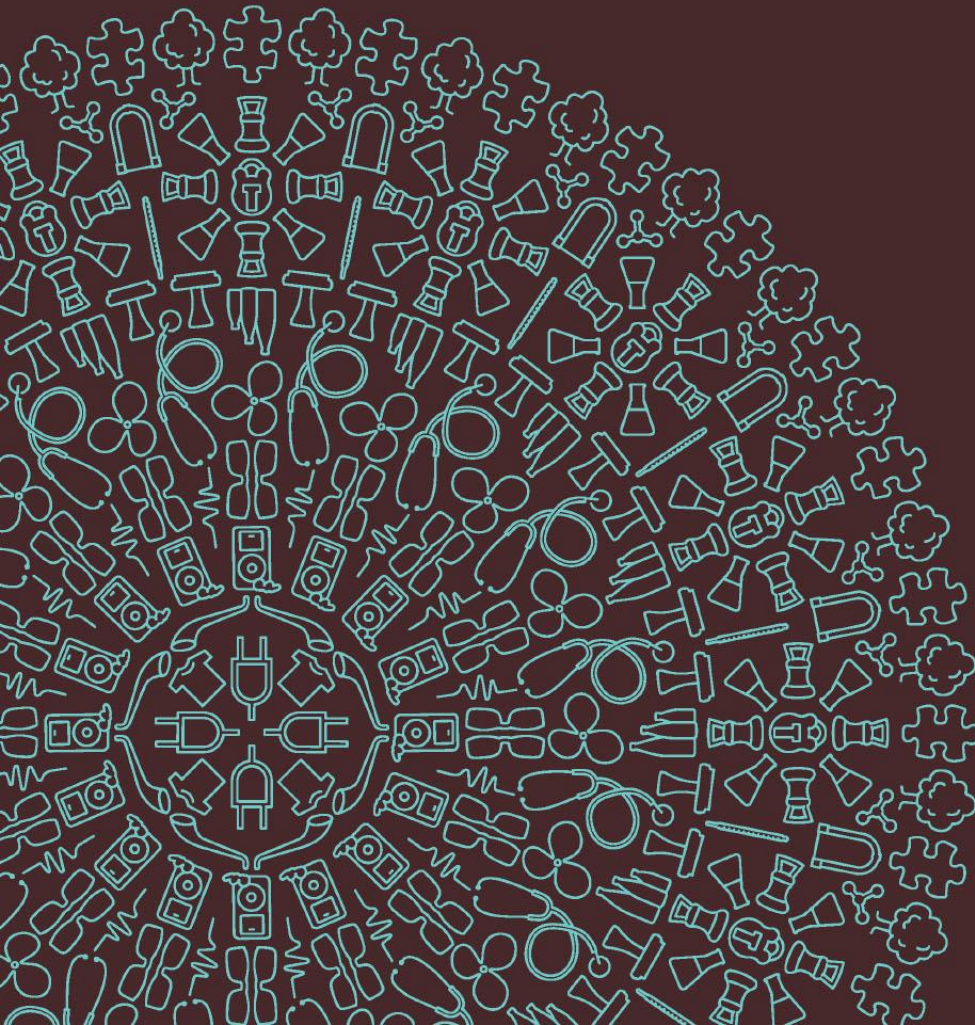


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The EU's Geo-blocking Regulation: overview and practical issues

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Agenda

1. Policy context – Digital Single Market Strategy
2. What is geo-blocking and the purpose of the Regulation?
3. What does the Regulation cover?
4. What is not covered by the Regulation?
5. What is “unjustified” geo blocking?
6. What are the potential implications?
7. How about complying with local laws?
8. Enforcement?
9. How about Brexit?

Policy context – Digital Single Market Strategy

- The Regulation key → Commission's Digital Single Market Strategy
- Single Market Imperative
 - prevent market segmentation along national lines
- Other Commission initiatives:
 - Portability Regulation
 - recommendation on measures to effectively tackle illegal content online



What is the Geo-blocking Regulation?

- Geo-blocking is when, based on nationality/residence/place of establishment, on line sellers:
 - deny access to websites for customers in other Member States
 - prevent consumers from finalising transactions
 - prevent access to good or services or offer different terms and conditions:
 - 37% of websites allow customers from another Member State to finalise an on line order (2017 data)



What does the Regulation cover?

- **Geo-blocking:** a trader must not block or limit customers' access to websites because of a customer's nationality, residence or place of establishment, unless '*objectively justified*'
- **Redirecting a customer without permission:** a trader must seek permission before redirecting based on nationality or location. Even if a customer agrees to the redirection the trader must make it easy to return to the website originally searched
- **Discrimination:** on the grounds of nationality/residence/place of establishment is prohibited; for applying example different terms and conditions on such grounds will not be permitted

What is not covered by the Regulation?

- It does not:
 - (currently) apply to copyright protected works, financial services, transport or healthcare
 - harmonise prices between different EU Member States, or impose an obligation to sell
 - it also prohibits agreements containing passive (or unsolicited) sales restrictions which violate competition law rules on vertical agreements
- Review of Regulation in 2020 to focus on whether it should cover copyright protected works



What is 'objectively justified' geo-blocking?

- The Regulation allows for the blocking of customers in specific Member State where this is necessary to ensure compliance with local laws
- There is no definition of 'objectively justified' in the Regulation but the following are likely to justify differential treatment:
 - different legal requirements/VAT
 - sectors outside the scope the Regulation, e.g. transport/health/copyright/retail financial services

What are the practical implications?

- Website site set-up:
 - traders will not be able to block or limit customers access to their online interfaces (website & apps) due to nationality, place of residence or IP address
 - online interfaces will no longer be able to redirect customers to a local site – any redirection will require explicit consent
 - traders must ensure that sales promotions apply equally to anyone purchasing from any online interface
 - traders need to be cautious about targeting particular countries, now that they cannot refuse to sell to anyone



What are the practical implications?

- Terms and conditions/distribution agreements:
 - traders need to check that terms and conditions and distribution agreements do not discriminate based on location, nationality or place of residence
 - traders need to consider if logistics and distribution agreements are fit for purpose or are geared to specific countries
 - the Regulation **only** covers general terms
 - individually negotiated terms between a trader and a customer are not covered



What are the practical implications?

- Payment mechanisms:
 - traders are free to accept any payment means
 - they cannot discriminate between local and other EU customers
 - traders need to check that online interfaces are set-up to accept foreign cards
- Physical goods:
 - traders must sell physical goods to customers in all Member States
 - no requirement to offer a delivery service
 - cannot discriminate in terms of delivery options
 - important that T&Cs are sufficiently flexible to charge different delivery costs



What are the practical implications?

- Issues related to VAT:
 - SMEs are concerned with the increased administrative burden resulting from the obligation to comply with national tax laws
 - the Regulation specifically exempts, from the rules on non-discrimination, traders that fall under a national VAT exemption threshold
- Online prescribing and pharmacies:
 - this is a question of considerable interest to the business community
 - the Regulation specifically exclude healthcare services and online prescribing

Complying with local laws

- The Regulation does not require a trader to ensure compliance with the local laws in another Member State (e.g. labelling)
- Product rules only need following when a company is pursuing commercial activity in a specific location
- If a trader ships good to France, consumers elsewhere in the EU (e.g. Spain) must be able to buy the good delivered in France as if they were French
- The French Courts would have jurisdiction over a legal challenge based on consumer law

Enforcement

- Member States are required to adopt their own sanctions for non-compliance with the Regulation
- UK: the Regulation is likely to be added to the list of 'community infringements' under Part 8 of the Enterprise Act 2002
- All Part 8 enforcers will be able to bring enforcement action to remedy a breach of the Regulation – includes the CMA and Trading Standards



Geo-blocking – key points to takeaway

- Single Market Imperative/Discrimination
- Traders will not be able to block or limit customers access to their online interfaces due to nationality, place of residence or IP address
- Online interfaces will no longer be able to redirect customers to a local site – any redirection will require explicit consent
- The Regulation covers general **not** individual terms
- Traders are free to accept any payment means but cannot discriminate
- Product rules only need following when a company is pursuing commercial activity in a specific location



How about Brexit?

- The Regulation comes into force pre Brexit (3 December 2018) – UK leaves EU 29 March 2019
- **No deal:**
 - the EU (Withdrawal) Act 2018 makes clear that all direct EU legislation will be enshrined in UK law
 - UK will be unable to geo-block EU consumers but EU traders could geo-block UK consumers
- **Deal?:**
 - the Regulation will apply during 'implementation period (29 March 2019 – 31 December 2020)
 - what happens after 2020 will depend on terms of new EU/UK trade agreement



Questions?



Thank you

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