



BOOSTING E-COMMERCE IN THE EU

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QUESTIONS AND ANSWERS

See also [IP/16/1887](#)

Being able to buy and sell products and services online has generated many opportunities. Consumers benefit from more choice, even if they live in peripheral regions. And companies big or small can reach a wider customer base. But electronic commerce in the EU is not functioning as smoothly as it could. As a result, consumers and retailers are missing out on opportunities. The value of e-commerce in the EU is growing, but its full potential still remains untapped. Only 15% of consumers buy online from another EU country and 8% of companies sell cross-border. Why? It is often too complicated and too expensive. As part of its efforts to unlock the potential of e-commerce the Commission has adopted a package of proposals to stop unjustified geo-blocking, increase the transparency of parcel delivery prices and improve the enforcement of consumers' rights.

I. GEOBLOCKING

What is geo-blocking and what is the Commission doing about it?

Geo-blocking refers to practises used by online sellers that result in the denial of access to websites from other Member States. It also includes situations where access to a website is granted, but the customer from abroad is prevented from accessing the product or service in question or being asked to pay with a debit or credit card from a certain country. "Geo-discrimination" also takes place when buying products and services off-line, e.g. when a consumer is physically present at the trader's location but is either prevented from accessing a product or service or being offered different conditions.

The proposed Regulation on geo-blocking aims to provide for more opportunities to customers: it addresses the problem of customers not being able to buy products and services from traders located in a different Member State, or being discriminated in accessing the best prices or sales conditions compared to nationals or residents. Consumers and businesses – especially SMEs – show an increasing interest in shopping across the EU and online sales of products are growing by 22% per year. However, frequently traders still refuse to sell to customers from another EU Member State or to offer equally advantageous prices in comparison with local clients. A [Commission survey](#) found that only 37% of websites allow customers shopping from another EU country to reach the final step up to the point just before pushing the order confirmation button. The Commission regularly receives complaints (over 1500 between 2008 and 2015) describing cases of different treatment due to the customer's nationality, place of residence or place of establishment. The problem equally affects consumers and businesses as end-users of products and services and exists both in the online environment and in the physical world.

While the principle of non-discrimination is already established under the [Services Directive \(2006/123/EC\)](#) and the Commission has applied it in services sectors such as car rental companies or amusement parks, companies and consumers alike will benefit from more legal certainty about which practices are allowed and which ones are not. The Regulation will provide this legal certainty and enforceability for products and services online or offline. The Regulation is a powerful discouragement to traders intending to discriminate.

What are the main elements of the proposal?

1. Sale of products and services

The proposal defines specific situations when there can be no justified reason for geo-blocking or other forms of discrimination based on nationality, residence or location. In these circumstances, customers from another Member State should have the same access to goods and services as local customers. These situations are:

- o Sale of products without delivery
 - When a customer buys a product, such as electronics, clothes, sportswear or a book, which the

trader does not deliver cross-border to the customer's Member State. Foreign customers should be entitled to delivery in the country of the trader in the same way as local customers.

- *Example: A Belgian customer wishes to buy a refrigerator and finds the best deal on a German website. The customer will be entitled to order the product and collect it at the trader's premises or organise delivery himself to his home.*

o Sale of electronically supplied services

- When a customer buys an electronically delivered service, such as cloud services, data warehousing, website hosting.

- *Example: A Bulgarian consumer wishes to buy hosting services for her website from a Spanish company. She will have access to the service, can register and buy this service without having to pay additional fees compared to a Spanish consumer.*

o Sale of services provided in a specific physical location

- When a customer buys a service which is supplied in the premises of the trader or in a physical location where the trader operates. ^[1] This category covers services such as concert tickets, rental of summer accommodation and car hire.

- *Example: An Italian family visits a French theme park and wishes to take advantage of a family discount on the price of the entry tickets. The discounted price will be available for the Italian family.*

In the above cases geo-blocking or geographically-based discrimination will only be possible in exceptional situations, where a strict national or EU legal requirement obliges the trader to block access to the offered products or services (e.g. a prohibition to sell alcohol to non-residents).

For electronically supplied services (such as cloud services, data warehousing, website hosting), the application of the prohibition of discrimination is delayed until mid-2018 in light of their specific characteristics and in order to allow these service providers to prepare for the changes. For the online services related to non-audiovisual works protected by copyright, the non-discrimination provision – i.e. the obligation to allow foreign customers to access the same offers as local customers – does not apply at this stage although the possibility of its extension to these services will be subject to a review. However, other rules, such as no blocking of access to online interfaces, no re-routing without the customer's consent and no discrimination related to payment means as well as transparency provisions, will apply to these services from the outset.

2. Access to websites

o The proposal bans the blocking of access to websites and the use of automatic re-routing without the customer's prior consent. This will increase price transparency by allowing customers to access different national websites. This provision also applies to non-audio-visual electronically supplied services, such as e-books, music, games and software.

o *Example: A British customer wants to access an online clothing shop's Italian website. Even though she types in the URL of the Italian version, she gets redirected to the British version. After the entry into force of the Regulation such redirection will require the explicit consent of the user and even if the customer gives consent to the redirection, the original version she sought to visit should remain accessible.*

3. Non-discrimination in payments

o While traders remain free to accept whatever payment means they want, the proposal includes a specific provision on non-discrimination within those payment means. It covers situations when different treatment is a result of the location of the payment account, the place of establishment of the payment services provider or the place of issuance of the payment instrument.

o Different treatment is prohibited if these three conditions are met:

- Payments are made through electronic transactions by credit transfer, direct debit, or card-based payment instrument;

- The trader can request strong customer authentication by the payer, and;

- The payments are in a currency that the trader accepts.

o These provisions complement the [2012 Single Euro Payments Area Regulation \(SEPA\)](#), which foresees that when shopping abroad consumers can use their bank debit card to make a payment in Euro as they would in their home country.

Which sectors are not covered in this proposal?

The proposal does not concern services already covered by sector-specific legislation or which are not easily traded across borders:

- **Transport services:** These services are excluded from the proposal as existing EU transport legislation already explicitly prohibits discrimination based on nationality and place of residence for three types of transport: air flight tickets, bus and coach transport and waterborne transport. As part of the ongoing review of the rules for rail passenger rights, the Commission intends also to include a similar prohibition into the upcoming reform for rail transports.

- **Retail financial services:** Access to these services are not included in the proposal as the upcoming follow-up document to the [Green Paper on retail financial services](#) will address discrimination when accessing services such as taking out a mortgage, opening a bank account, or buying cross-border insurance. However, the proposal covers all differences in treatment operated by certain payment means, notably credit cards and direct debit cards.

- **Audiovisual services:** Facilitating the access to audiovisual services across borders is part of other initiatives under the Digital Single Market strategy. The Commission today presented updated EU rules for audiovisual media that notably strengthen the promotion of European works ([press release](#)). Under its ongoing modernisation of the EU copyright framework, the Commission presented in December 2015 a proposal allowing Europeans to travel with the digital content – films, sports broadcasts, music, e-books and games – that they have purchased or subscribed to at home ([press release](#)). Next steps related to the modernisation of EU copyright rules are due in the third quarter of 2016.

As part of its Digital Single Market Strategy, the Commission is working to allow Europeans to have better access to digital products and services as well as to a wider content across Europe. To achieve this goal, the Commission is working on different initiatives in parallel to address the specificities of different types of products, services and content. For example, under the [digital contracts initiative](#) the Commission has proposed to fully harmonise the main mandatory consumer rights applicable to the supply of digital content and distance sales of products. Once adopted, these proposals will reduce the costs resulting from differences in contract law, create legal certainty for businesses, and help consumers make the most of shopping online across the EU. The Commission also intends to present a proposal on VAT simplification later this year to reduce the VAT-related administrative burden of cross-border transactions.

Why can't these problems be addressed by better enforcement of existing rules?

While the principle of non-discrimination is already established under the [Services Directive](#) and the Commission has applied it in services sectors such as car rental companies or amusement parks, it can sometimes be difficult to put into practice.

[Article 20\(2\) of the Services Directive](#) prohibits all types of unjustified territorial restrictions, but only sets out general principles and allows for different treatment of customers when justified by "objective criteria". The Directive refers to a long list of possible objective criteria which has proven difficult to apply in practice, creating uncertainty for consumers, traders and national enforcement authorities.

Despite efforts to remedy these problems, for example with [the Commission's 2012 Guidelines on how to interpret objective criteria in practice](#), the existing rules are still perceived as ambiguous and complicated to enforce by national authorities (which have the main responsibility for enforcement actions).

Recurring complaints from consumers coupled to the fact that no trader has ever been sanctioned for infringing the non-discrimination principle in Article 20(2) underline the need to clarify its application and strengthen its enforcement by means of a new legal instrument.

Does the proposal impose an obligation to sell and deliver across Europe?

No. The draft regulation does not create an obligation to sell, but only clarifies an already existing prohibition to discriminate on the basis of nationality or place of residence. The proposed Regulation does not introduce an obligation to deliver across the European Union. It defines specific situations where customers cannot be denied access to products and services solely for reasons relating to nationality, place of residence or place of establishment.

How will you ensure the contractual freedom of companies?

The proposed Regulation does not introduce an obligation for companies to contract but an obligation to treat European customers in the same manner when they are in the same situation, regardless of their nationality, or place of residence or establishment.

There could be valid reasons for treating customers differently. That is why the proposal focuses on specific, carefully designed situations when customers cannot be discriminated against solely on the grounds of where they come from or where they live. Under these specific situations companies' right to contract will indeed be curtailed, in a similar manner that the existing non-discrimination *acquis* prohibits discrimination on grounds like e.g. ethnic origin or religion. All other reasons for traders not to sell, for example if a particular product is out of stock, remain unchanged.

The freedom to conduct business and the right to property are fundamental rights enshrined in Article 16 and 17 of the EU Charter of Fundamental Rights. As stated by the Court of Justice, these rights are not absolute but have to be considered in relation to their social function and other fundamental rights and principles. In light of the proposal's policy objective of realising the EU's Single Market and ensuring that European customers who are in the same situations are treated alike, a limited restriction of the freedom to conduct a business and the right to property, are considered necessary and proportionate.

What's the territorial scope of the proposal?

As under the existing rules on consumer protection, the proposed Regulation applies to all traders offering their activities to European consumers in the European Union, regardless of whether they are established in the EU or in a third country. This is the same principle as laid down in the [2011 Consumer Rights Directive](#) and the [2015 Payment Services Directive](#).

Is the Commission trying to regulate prices?

No. The purpose is to tackle discrimination between European customers, currently hampering the potential for cross-border trade and preventing the full use of the Single Market. The proposed Regulation does not, in any way, regulate or harmonise price levels. Traders remain free to set different prices on websites targeting different national audiences. However, these websites should be available for all EU citizens and - under the specific situations described above - customers should be able to purchase products or services under the same conditions as nationals. This proposal does not address pricing as such nor does it address dynamic pricing, where traders adapt their offers over time, depending on a number of factors (such as competitor pricing, supply and demand and other external factors in the market).

How does the proposal avoid imposing additional regulatory burden on SMEs?

Businesses want to sell their products and services. The Commission's objective is to allow them to expand their markets and attract more customers. The proposed Regulation has been developed with special attention to the need to limit the potential regulatory and administrative burden falling on traders. Options that were considered too burdensome were rejected as part of the impact assessment. The main burden would be to ensure access to websites and prevent automatic re-routing. However, the cost for adapting websites in line with this obligation is foreseen to incur only a limited, one-off cost, considered justified and proportionate to the objective pursued.

Compliance with VAT obligations is a particular concern for SMEs, particularly in the cross-border context. The proposal therefore contains well-balanced provisions where VAT compliance is taken into account.

SMEs will also benefit from the proposal when purchasing products or services. The proposal will grant businesses the same rights as those given to consumers, helping entrepreneurs that want to buy products and services from other Member States.

Does the proposal require microenterprises to pay for VAT?

Compliance with VAT obligations is a particular concern for SMEs, especially in the cross-border context. The importance of avoiding burden on small business with additional tax obligations is reflected in the proposal which contains well-balanced provisions as regards VAT compliance. The proposal specifically exempts from the non-discrimination requirements those traders that fall under a national exemption VAT threshold from the need to register in order to account for VAT of other Member States in order to sell electronically provided services. This is provided in order to ensure that these companies – subject to the existing national rules - are not obliged to pay for VAT due to EU rules, neither in the Member State where they are located, nor in those to which they provide their services cross-border.

Will traders have to accept all national debit cards from other EU countries?

No. The proposed Regulation only says that traders may not discriminate based on the country in which a credit or debit card is issued, but only within a specific payment brand. In practice, it means that if a trader accepts Maestro cards from France, they should accept a payment through a Maestro card from Germany too. However, if a trader only accepts cards from a specific payment brand such as Bancontact in Belgium, they would not have to accept German cards which only work within the Girocard payment brand.

Doesn't the requirement to deliver to an address different than the one of the payment means open the door to fraud and criminal activity?

The risk of fraud will not be any higher following the implementation of the revised [Payment Services Directive \(2015/2366/EU\)](#). The Directive introduces strict security requirements for electronic payments, reducing the risk of fraud for all new and more traditional means of payment, especially

online payments. Under the Directive, providers of payments services are obliged to apply so-called "strong consumer authentication", in order to validate the identity of the user of a payment services or of the payment transaction. The Directive requires a customer to provide minimum two elements categorised as "knowledge" (e.g. a password or a PIN), "possession" (e.g. the card or an authentication code generating device) and "inherence" (e.g. the use of a fingerprint or voice recognition) in order to validate a transaction. This reduces the risk of fraud to the extent that the use of a pick-up address different than the one of the payment means is not needed as a proxy for fraud detection.

Does the proposal cover payments made upon invoice?

No. The scope of the provision on equal treatment in payments is limited to card-based payments.

Based on complaints and other gathered evidence, the main obstacles for customers have been refusal to accept card-based payment, while restrictions on payment by invoice do not appear to be a common problem. Traders are free to indicate that payments upon invoice should be made.

How will the new rules be enforced?

Member States should designate one or more bodies responsible for taking effective action and to secure the compliance of businesses with the requirements of the Regulation. Enforcement in business-to-consumer relations will in particular be facilitated by the strengthened cooperation between national authorities through the reform of the Consumer Protection Cooperation Regulation also part of this package (see later section). In addition, businesses and consumers will be able to enforce their rights on the basis of the existing European instruments on civil justice, in particular those ensuring access to court and applicable law, using the uniform European procedures at their disposal.

What happens next with this proposal and when will it take effect?

The proposal will now be sent to the European Parliament and Council of the EU. Following their agreement the Regulation will be formally adopted. Since a Regulation is directly and immediately applicable across the EU, Member States do not need to adopt implementing measures afterwards. Commission intends to facilitate the negotiation process between the Council and European Parliament so that the Regulation can take effect in 2017.

Certain parts of the Regulation will apply at a later stage. This concerns the non-discrimination principles that will apply to the electronically supplied services which are not related to content protected by copyright as of 1 July 2018 in light of their specific characteristics and in order to allow service providers to prepare for the changes. For the online services related to non-audiovisual works protected by copyright, the non-discrimination provision does not apply at this stage although the possibility of its extension to these services will be subject to a review. The Commission will engage with stakeholders in order to prepare such a review, including on the basis of evidence and information already gathered. However, other rules such as no blocking of access to online interfaces, no re-routing without the customer's consent and no discrimination related to payment means, will apply to all types of electronically supplied services (including the non-audio-visual services) from the outset.

II. CROSS-BORDER PARCEL DELIVERY

Why is EU action on cross-border parcel delivery necessary?

High prices and the inconvenience of cross-border parcel delivery are one of the biggest obstacles for consumers and retailers who would like to buy and sell online across the EU. In the [public consultation on parcel delivery](#) and a [Eurobarometer survey on e-commerce](#), a lower price for cross border delivery was identified as a main improvement that would make businesses and consumers buy and sell more online. A lack of transparency surrounding parcel delivery prices encourages operators to maintain prices that in some cases are very high. Cheaper parcel delivery would also encourage consumers to choose from a wider range of products and e-retailers to reach new markets. Contrary to what people might think, high cross-border parcel prices do not always reflect the underlying costs involved. For example, the price of a comparable standard 2kg parcel could be very high from one country and much lower from another, even if both have similar labour costs and the parcels will travel a similar distance. To send a parcel from the Netherlands to Spain would cost €13, while to do the same thing in reverse would cost €32.74. An [econometric study on letter and parcel prices](#) done by the Saint-Louis University also shows that cross-border parcel prices are up to 5 times higher than their domestic equivalent for all products. Divergent national legal frameworks and differences in how Directive 97/67/EC (the [Postal Services Directive](#)) has been implemented mean that national postal regulators do not have the information they need to assess prices and monitor the parcel operators that are active on delivery markets. The Commission aims to improve the situation by improving the regulatory oversight and ensuring transparency of prices for parcel delivery in the EU.

What are the main elements of the proposal?

There are three main elements to the proposed Regulation:

- 1) **Increased regulatory oversight of all parcel delivery service providers** giving regulators legal certainty of their role, enabling them to monitor the parcel market more effectively and so identify potential problems more easily. Parcel delivery providers that have 50 or more employees or are active in more than one EU country will be required to send national postal regulators basic information about their operations (e.g. name, address) and annual updates on volumes, turnover and the number of employees.
- 2) Improved **price transparency** through the publication of domestic and cross-border prices for a set of basic services (such as sending a 2kg parcel to another country) offered by universal service providers. Postal regulators will be required to assess the affordability of these services and their conclusions will be published on a website.
- 3) Requiring universal service providers to offer **transparent and non-discriminatory third party access** to multilateral cross-border agreements, in particular on terminal rates, to encourage competition in cross-border parcel markets.

The Regulation complements other initiatives to improve e-commerce and the quality and transparency of cross-border parcel services. It aims to render competition on cross-border parcel markets more efficient and make prices for parcel delivery more transparent.

How do you define parcels and parcel service providers that fall under the proposal?

- A **parcel delivery service provider** is involved in clearance, sorting or distribution of parcels. Transport alone, if not provided together with one of these activities, is not considered to be a parcel delivery service. This covers universal service providers but also the express industry or any company involved in the business of clearance, sorting and distribution of parcels (above 50 employees or active in several Member States).
- A **universal service provider** provides the universal postal service, as set out in the [Postal Services Directive](#), in a country in which it is established. Under EU rules, Member States must ensure that citizens are provided with a postal service of a specified quality anywhere in their country at an affordable price. They should ensure that contact and access points are able to cope with the needs of their users and that universal service is guaranteed at least 5 working days a week (including 1 collection and 1 delivery per day). This is the universal service obligation.
- A **parcel** is defined in the Regulation as an item which weighs less than 31.5kg and its smallest dimension exceeds 20mm.

How will the affordability of tariffs be assessed? How will you define objective criteria?

Objective criteria clearly influence the costs of delivery, for example the domestic tariffs in the country of origin and the final destination, the level of terminal rates as well as specific transportation or handling costs and the volume of parcels. National Regulatory Authorities (NRAs) already assess the affordability of a selection of (domestic) postal services and they know how the affordability of tariffs can be assessed. They might consider whether vulnerable consumers and small businesses can purchase certain services, price benchmarking and the number of hours that someone needs to work to be able to send a particular postal item. When assessing the affordability of tariffs, NRAs will have to take into particular consideration domestic tariffs, terminal rates and any uniform tariffs. Information that can be disclosed, including the assessment of affordability, will be published by the Commission on the same website as the delivery prices.

What are terminal rates?

Terminal rates are fees that universal service providers charge each other for the distribution of cross-border letter or parcel mail. For example, when a parcel is sent from country A to country B, the provider in B charges the provider in A terminal rates to cover the cost of delivery within country B to the final addressee.

Is the Commission proposing to regulate prices?

No. The Commission is not proposing a cap on delivery prices, but introducing greater price transparency as a way to foster competition. Price regulation is only a means of last resort, where competition does not bring satisfactory results. The Commission will take stock of progress made in 2019 and assess if further measures are necessary.

Why won't the Commission let the market itself fix the problems?

The cross-border parcel market is not competitive for all senders. In many countries, customers who want to send individual or small shipments, especially in remote areas, have a very limited choice of cross-border delivery services. The regulation aims to fix a clear market failure for small companies

and individuals with low volumes who do not have the bargaining power to obtain better conditions through negotiated tariffs. Non-legislative action linked to the [2013 Parcel Roadmap](#) has improved neither affordability nor regulatory oversight so far. A Regulation that clearly defines the role of national authorities will improve the situation and help complete the single market for parcel delivery.

What will be the benefits for consumers and businesses?

Increased regulatory oversight of parcel delivery providers and improved price transparency combined with assessments of affordability should result in more competitive parcel delivery markets and lower prices for consumers. Lower prices will encourage smaller e-retailers to sell to other countries and consumers to buy from them. Consumers will also be able to benefit from a wider range of products at lower prices, and e-retailers will gain new markets. It has been [estimated](#) that lower prices could increase cross border e-commerce by 4.3%. This should positively increase household consumption by over EUR 2 billion and the Real National Income also by over EUR 2 billion. It would also increase the number of firms selling online across borders by 6.2 % and the volume of online trade by 5%. Cross-border e-commerce is also an opportunity for postal operators who are facing declining letter volumes. If prices for small senders are prohibitive, universal service providers will lose out on a growing revenue stream.

How will you ensure transparency?

The Regulation requires universal services providers to inform National Regulatory Authorities (NRAs) of the prices for certain cross-border products. This information will be transmitted to the Commission and published on a public website by 30 April of each calendar year. NRAs' assessments of affordability will be published on the same website as well.

What will be the role of the national regulatory authorities?

National Regulatory Authorities (NRAs) will be responsible for collecting the prices of certain services from universal service providers and assessing their affordability. They will also be responsible for collecting basic information about the activities of all parcel delivery service providers, such as the names and addresses of the providers; the services that they offer and conditions of sale, including complaints procedures; annual turnover for parcel delivery services and number of items delivered; and the number of employees.

Will parcel delivery providers have new responsibilities? Won't the proposal only add to the administrative burden of small operators?

Only parcel delivery providers who do not already submit information to national postal regulators will have an additional responsibility. Parcel delivery service providers who only operate in one EU country and employ fewer than 50 people will be exempt from the obligation to provide information.

How will the Commission ensure the implementation?

A Regulation is directly binding on all Member States; it is concrete and specific, and helps avoid further regulatory fragmentation. The creation of the EU price webpage and affordability assessments must all happen to the strict timetable that is set out in the Regulation. It also requires EU countries to establish penalties for infringements of the Regulation and to take all necessary steps to ensure the Regulation is implemented. If necessary, the EU Treaties provide for legal instruments allowing the Commission to ensure compliance with the obligations. In 2019, and every four years thereafter, the Commission will submit an evaluation report on the application of the Regulation to the European Parliament, the Council and the Economic and Social Committee.

Why is the Postal Services Directive not sufficient to solve the problem?

The [Postal Services Directive](#) is a framework directive that has been transposed by all EU countries, but doesn't provide the necessary clarity on the role of NRAs and their competences. There are also legitimate differences in the scope of the universal service obligations between EU countries. For example, some countries do not include track and trace services within the universal service obligation and others do. This means that the Directive alone cannot ensure affordable prices for the services used for e-commerce. Furthermore, the Directive only requires EU countries to encourage universal service providers to fix (cross-border) terminal rates in relation to costs, instead of requiring them to do this, so the relationship to costs cannot be guaranteed.

What other actions are planned to improve the quality of cross-border parcel services?

Other actions addressing problems related to cross-border parcel delivery are underway. EU universal service providers have already introduced a cross-border complaints handling procedure and they have committed to introduce new services, such as cross-border track and trace and common labels. The Commission regularly monitors progress in this area. Two e-commerce associations, EMOTA and E-commerce Europe, have developed European trustmarks for e-commerce that include delivery features. The Commission is supporting an information platform about delivery services through

COSME funding and it has already prepared a standardisation request for CEN, the European Committee for Standardisation, which includes the development of quality standards for cross-border parcel delivery.

What are the next steps?

The draft Regulation will be submitted to the European Parliament and Council for adoption. The Commission will take stock of progress made in 2019 and assess if further measures are necessary.

III. CONSUMER PROTECTION AND UNFAIR COMMERCIAL PRACTICES

1. Proposal for a revision of the Consumer Protection Cooperation

What is the Consumer Protection Cooperation and what problems are you addressing?

The [Consumer Protection Cooperation Regulation](#) was established in 2007 to support national consumer authorities when they address breaches of consumer rules in more than one country. It successfully strengthened the enforcement of consumer rights across the EU.

However, around 37% of e-commerce websites in travel, entertainment, clothing, electronic products and consumer credit services don't comply with key consumer rules, generating a detriment of EUR 770 million per year for consumers shopping online cross-border.

Currently only a limited number of enforcement authorities across Europe are equipped to address online breaches fast and efficiently. Some cannot pursue traders for past infringements, such as misleading advertisements which were only live for a few hours or days. Nor are they able to track financial flows to detect the identity of those behind such breaches. Also, some authorities cannot take measures to take down websites containing scams pending the end of the investigation.

This is why the European Commission is proposing to improve the enforcement mechanism used by the national authorities to address practices which are harmful to consumers in several countries – through the revision of the Consumer Protection Cooperation (CPC) Regulation.

What will consumers gain from more effective enforcement through revised CPC Regulation?

Obtaining compensation will be easier thanks to the extended powers of national authorities. Consumers will also be better protected from bad practices in general, because such practices will be stopped faster. Rogue traders will be discouraged because from such practices as it will become more difficult for traders to hide their identity through complex online structures. Authorities will be able to track the financial flows and request banks to provide information to identify them more easily.

What will businesses gain from more effective enforcement through revised CPC Regulation?

Businesses operating in all or a large majority of Member States will benefit from a one-stop-shop approach. A possibility to negotiate commitments at EU-level will make it simpler, faster and cheaper for the businesses to resolve consumer issues. More consistent enforcement of consumer legislation across Europe will increase legal certainty and reduce legal expertise costs when doing marketing cross-border.

The proposal does not impose any legal obligations on businesses. It streamlines administrative systems for the enforcement of existing consumer laws and simplifies the business environment, especially in the EU's Digital Single Market.

What will national authorities gain from more effective enforcement through revised CPC Regulation?

Better enforcement cooperation, supported by more developed powers and procedures, will allow authorities to make financial savings. They will be able to pool their resources to address issues of common concern in the Single Market. In particular, new procedures will permit closer coordination when harmful practices concern a large majority or all Member States. In such common actions, launched and coordinated at EU level, authorities will benefit from economies of scale, which could allow them to save up to 45% of their current costs if they reach an agreement with the traders, or 75% of their costs if litigation is required.

Is the European Commission going to be more active in enforcing consumer law?

Enforcement of consumer laws is and will remain the competence of the Member States.

The European Commission's proposal enables the Commission to better assist Member States when there is a need for EU-level intervention. The proposal will set up a mechanism for the Commission to launch a coordinated action of national enforcers who will seek commitments from traders to change its practices. This mechanism will tackle serious large-scale breaches that affect consumers across borders require a strong and consistent EU-level answer. Consistent and coherent enforcement across the EU is also vital for ensuring a level playing field in consumer markets.

How does this proposal support the Commission's initiative on geo-blocking?

For the geo-blocking proposal to deliver its intended benefits, enforcement is needed. Once adopted, the proposal on geo-blocking would be enforced by the consumer protection authorities in the framework of the CPC Regulation where business-to-consumer transactions are concerned. For cases not covered by the CPC Regulation (i.e. business-to-business transactions or situations involving only one Member State), Member States will need to designate enforcement authorities and adopt effective, proportionate and dissuasive sanctions.

For example, if information reaches authorities that German consumers who want to rent a car in Spain from a company via its German version of the website cannot access the same deal as residents of Spain via the Spanish version of the same car hire company's website, the CPC mechanism would be used to stop these practices. In case this car hire company is engaged in the same practice across many EU countries, the European Commission would launch a common action. In this action it would achieve a change in the company's practices through negotiation and, if necessary, could require the company to compensate the affected consumers.

2. Guidance on Unfair Commercial Practices Directive

What are unfair commercial practices and what is the aim of the Directive?

The [Unfair Commercial Practices Directive \(UCPD\)](#) protects consumers from misleading information or exposure to aggressive marketing techniques and that any commercial claim made by traders in the EU is clear, accurate and substantiated.

The UCPD is the main horizontal piece of EU legislation regulating misleading advertising and other unfair practices in business-to-consumer (B2C) transactions. It is widely used by national enforcement authorities to ensure fairness in these transactions and is the most regularly used legal basis for Consumer Protection Cooperation enforcement actions. It is also an important legal reference for businesses, especially by large traders that are active across the EU.

The Directive applies across all economic sectors, to products as well as services, both on- and off-line. It is based on general clauses on unfair, misleading and aggressive practices which are likely to affect the economic behaviour of consumers and contains a "black list" of 31 particularly harmful practices which are banned per se, regardless of the circumstances.

Why is guidance important, and why does it have to be updated now?

National authorities, businesses and other stakeholders started reporting on some difficulties in implementing the Directive in a uniform manner, especially with new business models appearing online.

The [current Guidance](#) to the Unfair Commercial Practices Directive dates back to 2009 and national enforcers and stakeholders regard it as a necessary tool to ensure greater legal certainty in the application of this Directive.

In 2013, the Commission started working on updating the existing guidance with the publication of a report on the Directive's implementation, organising workshops with stakeholders workshop and discussing the current issues with national consumer authorities through the Consumer Protection Cooperation Network.

What are the main novelties in the new guidance?

The guidance is based on Court of Justice of the EU case law on this Directive, and clarifies the application of the Directive to the latest online commercial practices, including for online platforms, travel and transport sector as well as the financial services sector.

The Guidance clarifies the interplay between the Directive and other consumer laws, like the [Consumer Rights Directive](#) (applicable in 2014), and the [new Package Travel Directive](#). It addresses, for instance, the hidden or ambiguous offers of additional services (e.g. travel insurance) by online travel providers.

The recent EU-wide enforcement actions by Consumer Protection Cooperation authorities, facilitated by the Commission on [in-app](#) purchases and [car rental](#) have provided important clarifications on the practical functioning of the Directive which are reflected in the Guidance.

Does the UCPD guidance change the existing legislation?

No, this is a Guidance document which explains how the legislation can be applied in practice and gives examples of court cases and decisions by national enforcement authorities. It is intended to facilitate implementation of Unfair Commercial Practices Directive, but it is itself not legally binding. Only the Court of Justice of the EU is competent to interpret Union law.

Is this only helpful for consumers, or also for business?

Consumers will benefit from improved enforcement of the Directive, which should limit the unfair

practices. Businesses, on the other hand, will benefit from the legal certainty that the revised Guidance will provide, allowing them to design their commercial practices in a way that should be accepted across the EU. Honest businesses will face less unfair competition from rogue traders thanks to clearer application of the rules.

Is the Guidance relevant for the collaborative economy, geoblocking and online platforms more in general?

The new Guidance clarifies how to apply the Directive in the online sector and in particular to platforms. The Guidance now clarifies that any online platform that qualifies as a "trader" and promotes or sells products, services or digital content to consumers must make sure that its own commercial practices fully comply with the UCPD.

If a platform acts as an intermediary, it should take appropriate measures which would, for instance, enable third party suppliers to comply with EU consumer and marketing law and help users to understand with whom they are concluding contracts. However, this does not mean that the platform has a general obligation to monitor the suppliers.

Geo-localisation techniques are not illicit per se under the UCPD. However, traders must inform about delivery restrictions at the latest at the beginning of the ordering process in accordance with the Consumer Rights Directive; in case traders do not inform consumers in this respect, this could qualify as an unfair commercial practice (omission of material information) if it is likely to cause the average consumer to take a decision he would not have otherwise taken.

[1] As long as the trader is located in a Member State which is not the same country where the customer is a national from, resides or is established.

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