

The Consumer Voice in Europe

# PUBLIC CONSULTATION ON GEO-BLOCKING AND OTHER GEOGRAPHICALLY-BASED RESTRICTIONS WHEN SHOPPING AND ACCESSING INFORMATION IN THE EU

Summary of BEUC's response



**Contact:** Agustín Reyna - [digital@beuc.eu](mailto:digital@beuc.eu)

**BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND**  
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • [www.twitter.com/beuc](http://www.twitter.com/beuc) • [consumers@beuc.eu](mailto:consumers@beuc.eu) • [www.beuc.eu](http://www.beuc.eu)  
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## Summary

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BEUC welcomes the European Commission's public consultation on geo-blocking and other geographically-based restrictions when shopping and accessing information in the EU.

Borderless shopping is not a reality in Europe as geo-blocking is still a widespread practice in the e-commerce sector.

While companies profit from the freedom to provide goods and services across Member States, consumers usually do not have the possibility to benefit from the same flexibility to buy a product or access a service from wherever country in the EU they want. The result is a segmentation of the Single Market at the expense of consumers.

Geo-blocking practices are usually applied under two grounds: nationality and country of residence. BEUC believes that geo-blocking based on the consumer's nationality should be banned because it violates Article 18 of the Treaty on the Functioning of the European Union (TFEU).

Regarding geo-blocking based on the country of residence, BEUC asks the European Commission to come forward with a separate legislative initiative which should address:

- Situations in which discrimination on the basis of the consumer's country of residence shall not be allowed (list of banned practices).
- Transparency: consumer should be informed about the reason of refusal.
- Specific sanctions.
- Monitoring and enforcement mechanism in co-operation with national enforcement authorities, consumer associations and the European Commission.

Below we provide a summary of BEUC's response to the public consultation<sup>1</sup>.

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<sup>1</sup> Our UK member Which? is not signatory to this paper.

## Why it matters to consumers

Very often consumers are prevented from ordering a product in another Member State or faced with higher prices than locals when booking a service (e.g. transport or entertainment) abroad just because of the country they come from. This is because some companies “geo-block” their services and erect artificial barriers for consumers living in a different EU Member State than where the company is established. Consumers should have the possibility to buy from retailers across the EU and, if that is not possible due to justified reasons, they should be informed why.

### 1. General remarks

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BEUC welcomes the European Commission’s public consultation on geo-blocking and other geographically-based restrictions when shopping and accessing information in the EU.

Consumers have a right to participate in the Single Market. Although the EU has reached a high level of harmonisation in different areas of law (e.g. consumer rights) to facilitate cross-border trade, restrictions to cross-border shopping stemming for example from selective/exclusive distribution agreements and/or arbitrary decision of companies not to sell to consumers from other countries have not been properly tackled.

One of the fundamental principles of the Single Market, namely the freedom to provide goods and services across the borders, should also be looked at from the other side: consumers should have a right to benefit from the freedom to receive services and to have access to products without being arbitrarily discriminated against as a consequence of unjustified business practices that lead to a segmentation of the Single Market.

Against this background BEUC very much welcomes that the European Commission decided to look at the demand-side of cross-border trade and aims at clarifying what practices would justify or not territorial discrimination.

The principle of non-discrimination already exists in EU law (article 20(2) Services Directive) but it is often breached by means of different geo-blocking practices. These practices prevent consumers from buying goods and/or accessing services across the European territory, especially consumers from smaller Member States, who normally have access to more limited markets and offers.

Geo-blocking practices include:

- **Refusal to sell:** consumers are able to access the trader’s website, but it is not possible to purchase products or services from it because it is necessary to provide for a postal address in a certain country.
- **Refusal to deliver:** the consumer can buy from the website but the product cannot be delivered in his country.
- **Rerouting:** consumers may be re-routed to a local website of the same company with different prices or a different product or service;

- **Price discrimination:** different prices are applied on the basis of geographic location or nationality.

BEUC has identified two main sectors in which geo-blocking is detrimental to consumers, particularly to those living in countries with limited local offers:

- Firstly, the **audio-visual sector** is perhaps the area where geo-blocking is most evident. It is a wide-spread practice of right holders (film studios) to grant exclusive licenses to distributors (TV broadcasters) on a country-by-country basis and to include clauses in those contracts that prevent them from serving consumers living in another Member State. We have addressed this problem in our [response](#) to the public consultation on the revision of the Satellite and Cable Directive.
- Secondly, the **online sale of goods and online services** (e-commerce). There are a number of reasons why companies refuse to sell consumers in other member states. Many of these reasons could be justified e.g. logistics reasons and tax regimes, while others should not e.g. market segmentation caused by commercial practices to maximise profit or by exclusive distribution preventing passive sales. This is a problems which seems to be more prominent among big online market places.

We underline that BEUC does not advocate for the imposition of an obligation for companies to sell across the borders. However, the freedom of party autonomy – an equally important principle – should be limited in case it leads to unjustified discrimination, which is not compatible with the Single Market concept of equal treatment and fair competition.

The EU should therefore clarify the factual and legal grounds that shall not be used to refuse requests by consumers residing in other member states.

## 2. Policy response

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Two main grounds are usually applied in geo-blocking practices: **nationality** and **country of residence**. Regarding geo-blocking based on nationality, these must be banned as they directly run against Article 18 TFEU.

From a different perspective, the solution to prohibit unjustified geo-blocking practices based on the country of residence of the consumer is more complex as there is no efficient regulatory instrument that addresses this type of discrimination.

Article 20(2) of the Service Directive is the existing policy response prohibiting unjustified geo-blocking. However, the scope of the Directive is too narrow in many respects:

- There are too many services excluded from the general scope of application of the Service Directive, such as services in the field of transport or audio-visual services.
- Discrimination based on different locations within a Member State of the European Union does not fall under the scope of application of the Service Directive.
- Article 20(2) does not directly impose contractual duties onto the service provider. The enforcement by (potential) parties to a contract will therefore often not be possible.

- Discrimination is not *per se* prohibited under the Service Directive but only discrimination which is not directly justified by objective criteria. Recital 95 gives, however, a large number of such justifications. In practice, this will lead to a *carte blanche* for companies to circumvent the intention of the legislator to prevent discrimination based on residence or nationality.
- The Service Directive does not provide for specific sanctions in case of discrimination. Consumers as well as public authorities should be able to make use of effective and dissuasive sanction mechanisms in case of geo-blocking.

For these reasons, BEUC asks the European Commission to come up with a **separate legislative initiative** to address geo-blocking in the e-commerce sector.

BEUC believes that any future legislative initiative tackling geo-blocking based on residency should not follow the regulatory technique of Article 20 of the Services Directive. Instead, the legislation should establish a **list of circumstances that companies shall not be entitled to invoke as grounds for territorial discrimination (list of banned practices)**.

This list would also have the advantage of bringing **more clarity and legal certainty to the application of Article 20 (2) of the Services Directive** as companies would know in advance that the situations referred to on this list could not be considered as justified objective reasons in the sense of this provision.

Besides, an appropriate policy response should comprise rules on **transparency**. Companies should have the obligation to explain the reason whether and why they treat a particular consumer differently based on their residence and provide a contact point for further questions. It must be ensured that that companies indicate these details on their website and before the transaction process has started.

In this respect, it must be noted that the Consumer Rights Directive already stipulates in Article 8(3) that 'trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted'.

If consumers received information about requirements that services providers have to comply with and reasons why a particular service is not available, consumer trust in the internal market would be enhanced.

Finally, for effectiveness of this instrument, it is of utmost importance that its provisions can be **enforced** and that there are **effective sanctions** available for the public enforcers.

On this note, due to the pan-European dimension of the problem, the EU is best placed to lead the enforcement of EU law against geo-blocking practices used by companies to maximise profit whilst artificially segmenting the Single Market. We have seen how effective this is in the context of EU competition law. The **monitoring and better coordination of national authorities** is therefore of great importance.

The non-existence of a list of banned practices often used to discriminate consumers could refrain national authorities for initiating cases against foreign companies discriminating consumers residing in their countries. Another reason why the Services Directive did not deploy any effect may be the fact that there is a lack of awareness of consumers about the problem of geo-blocking caused by the fact they might perceive it as 'normal'.

Apart from competition law infringements, the EU Commission has no competence to pursue itself prohibited geo-blocking. The Commission should ensure though that **all Member States adopt appropriate sanctions** for the enforcement of the Article 20(2) of the Services Directive.

This consistency should facilitate better co-ordinated actions under the **Consumer Protection Cooperation network (CPC-net)**. The more precisely defined unjustified grounds for geo-blocking, more effectively the enforcement of the new rules will be.

Additionally, definition of prohibited geo-blocking as an unfair practice under the Unfair Commercial Practices Directive could also be very effective in appropriate circumstances as a ground for enforcement action.

Finally, **coordination between the European Commission, national authorities and consumer associations** within the CPC network can more efficiently address pan-European infringements of consumer laws and geo-blocking cases.

Overall, BEUC firmly believes that consumers would benefit from these measures, as they would have access to a wider choice of products.

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