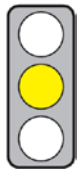


KEY ISSUES

Objective of the Communication: The Commission wants to improve cross-border online trade.

Affected parties: Consumers, online traders, parcel delivery operators, rights-holders and online intermediaries.



Pro: Harmonised contractual provisions for online businesses mean that there are fewer national peculiarities to be taken into account by online traders when it comes to cross-border sales, and also that consumer confidence increases.

Contra: (1) A ban on "unjustified geo-blocking" will result in EU-wide price alignment, in the extreme case, at the level of the most expensive country.

(2) The proposal for just one value-added tax audit to be carried out EU wide, carries the risk that Member States will try to gain an advantage for their business location by way of lax tax audits.

CONTENT

Title

Communication COM(2015) 192 of 6 May 2015: **A Digital Single Market Strategy for Europe**

Brief Summary

► Context and objectives

- With the "Digital Single Market Strategy", the Commission wants to make the EU the "leader in the digital economy", combat "fragmentation" of the digital markets and break down barriers (p. 3).
- The strategy is based on three pillars:
 - Pillar 1: Improving cross-border "online access to goods", hereinafter: online trade (this cepPolicyBrief),
 - Pillar 2: Creating the conditions for digital networks and services (see [cepPolicyBrief](#)) and
 - Pillar 3: Maximising the growth potential of the digital economy (cepPolicyBrief to follow).
- Pillar 1 deals, in particular, with the following subjects:
 - simplification of the rules on cross-border online trade,
 - improvement of cross-border parcel delivery,
 - prevention of "unjustified geo-blocking",
 - reform of EU copyright rules and
 - revision of value added tax rules for cross-border trade.

► Simplification of the rules for cross-border online trade

- With regard to cross-border consumer contracts, the law of the consumer's Member State applies in principle where the trader directs his activities to that country. Although the parties can also agree to use the law applicable to the trader instead, this option does not apply in the case of mandatory contractual provisions which serve to protect the consumer. (Art. 6 "Rome I Regulation" 593/2008)
- Differing national contractual provisions deter traders and consumers from cross-border online trade. Only 38% of consumers feel confident about cross-border online purchasing by comparison with 61% in the case of domestic online purchasing. (p. 4)
- The Commission wants to amend the proposal for a Regulation on a "Common European Sales Law" [COM(2011) 635] in 2015. It will (p. 4 et seq.)
 - harmonise the main contractual rights of both parties EU wide for the online sale of tangible goods so that traders can apply their national law in full, and
 - introduce EU-wide contractual provisions for online trade in digital content (such as e-books).
- The Commission wants consumer protection provisions to be more effectively enforced. For this it will (p. 5 et seq.)
 - set up an EU-wide online platform for dispute resolution and
 - amend the Regulation on Consumer Protection Cooperation [Regulation 2006/2004] in order to
 - clarify the powers of national enforcement authorities and
 - in the case of cross-border infringements of "consumer interests", improve the coordination of market monitoring and the "alert mechanisms" of national enforcement authorities.

► **Improvement of cross-border parcel delivery**

- Many online traders and consumers do not take part in EU-wide online trade due to a lack of "affordable" and "high-quality" cross-border parcel delivery services (p. 18 SWD(2015) 100). The Commission wants to increase confidence in online trade by improving parcel delivery services (p. 5).
- In the first half of 2016, the Commission will propose measures to improve (p. 5/6)
 - "price transparency" for European deliveries, particularly in order to reduce the high cost of small shipments,
 - the "regulatory oversight" of the cross-border parcel market.

It will assess the need for additional measures two years after adoption of these measures.

- The Commission will also examine self-regulation by delivery operators and online traders which it called for in its Roadmap for Parcel Delivery [COM(2013) 886, see [cepPolicyBrief](#)]. The aim of self-regulation is, in particular, to improve interoperability between delivery operators by way of track and trace techniques. (p. 5)

► **Prevention of "unjustified geo-blocking"**

- Geo-blocking is a technical measure used by online traders to restrict access to cross-border online purchasing by users in a specific geographical location – e.g. by way of IP addresses (S. 6).
- Geo-blocking includes, in particular, situations where users
 - are able to access the foreign website, but still cannot purchase from it or are subject to different prices or
 - are re-routed to a local website which may have higher prices or different products.
- Geo-blocking may arise from a corporate decision not to supply certain markets, from horizontal agreements between competitors to share the market or from vertical agreements on distribution rights in a specific area (p. 6).
- Geo-blocking may be justified, e.g. where traders are complying with legal obligations such as national bans on online gambling [p. 6; p. 23 SWD(2015) 100].
- In the first half of 2016, the Commission will make legislative proposals to end "unjustified geo-blocking". This may include (p. 6)
 - amending the e-Commerce Directive (2000/31/EC) and
 - amending national rules prohibiting discrimination in the provision of services – adopted on the basis of the Services Directive (Art. 20 2006/123/EC).

► **Reform of EU copyright rules**

- Many consumers are unable to access copyright protected digital content across borders (p. 26 SWD(2015) 100). The Commission will submit legislative proposals in 2015 in order (p. 6 et seq.)
 - to make it easier for consumers to access digital content from their Member State which can be lawfully acquired in other Member States, and
 - to ensure that consumers are able to access protected digital content, such as videos which they have acquired lawfully in their own Member State, when they are abroad within the EU, e.g. on holiday or business trips ("portability").
- In 2015, in order to facilitate cross-border use of copyright protected content, the Commission will propose harmonisation of exceptions to copyright for specific purposes – e.g. research, education and electronic text analysis ("text and data mining") (p. 7).
- In 2015, the Commission will make proposals to "clarify" the rules relating to online intermediaries, such as social networks and search engines, in order to stem infringements of copyright (p. 7).
- In 2016, the Commission will propose improvements to the enforcement of copyright and other intellectual property rights. In particular, commercial-scale infringers will be deprived of their revenue flows ("follow the money" approach).
- In order to promote the creation of new content, the Commission is considering measures "to safeguard fair remuneration" of creators (p. 7).
- In 2015 or 2016, the Commission will review the Satellite and Cable Directive (93/83/EEC) which aims to ensure cross-border transmission of radio and television programmes. It will explore whether there is a need (p. 7)
 - to enlarge the scope to include broadcaster's online transmissions and
 - for "further measures" to ensure enhanced cross-border access to broadcasters' programmes in the EU.

► **Revision of value added tax rules for cross-border trade**

- Differing national rules on value added tax are an obstacle to companies in cross-border trade. To change this, the Commission wants to reduce the administrative burden. (p. 8)
- In 2016, the Commission wants to submit proposals on the following areas (p. 8 et seq.):
 - The "electronic registration and payment system" for electronic services will be extended to the online sale of tangible goods. Companies will then only have to submit one VAT return in their own Member State rather than in all the countries where their customers are located.
 - An EU-wide VAT threshold for exemption from VAT will be introduced to make online trade easier for small businesses.

- In order to prevent companies from being subject to tax audits by different national authorities, a single VAT audit in the company's home country will be introduced.
- Small consignments imported into the EU by traders located in third countries are currently exempt from VAT. This exemption will be removed in order to prevent distortions of competition.

Policy Context

In July 2014, Commission President Juncker declared the completion of a digital single market to be one of the priorities of his period of office. At the same time as publishing this Communication, the Commission is launching an inquiry into competition in the e-commerce area. By 16 November 2015, the Commission will hold a consultation to review the Satellite and Cable Directive (93/83/EEC).

Options for Influencing the Political Process

Leading Directorate General:	DG Communications Networks, Content & Technology
Leading Committees of the EP:	Internal Market and Consumer Protection; Industry, Research and Energy; Rapporteurs: Evelyne Gebhardt (S&D Group, DE); Kaja Kallas (ALDE Group, EE)
Leading Federal Ministry:	Federal Ministry for Economic Affairs and Energy
Leading Committee of the BT:	Committee for Economic Affairs and Energy

ASSESSMENT

Economic Impact Assessment

Cross-border online sale of goods within the EU is often not possible or is significantly more expensive than comparable national activities. This fragmentation limits the competitive pressure on companies which results in a lower level of innovation and higher prices. It also prevents companies from benefiting from the advantages of a larger sales market. For this reason, the Commission's aim of combating the fragmentation of digital markets and removing barriers is appropriate. The following provides an evaluation of each of the proposed measures.

The proposed harmonisation of the main contractual rights applicable to the sale of tangible goods and the introduction of EU-wide contractual provisions to protect consumers applicable to online transactions, will reduce the costs of cross-border online sales. Although online traders currently have the option to apply the contractual law applicable in their home country with regard to cross-border sales, the mandatory contractual provisions of the consumer's Member State still apply to ensure that consumers are not disadvantaged as a result of this option. This provision means that online traders must take account of the relevant national provisions – such as remedies for non-performance and statutory minimum guarantee periods - in relation to cross-border sales. Many online traders shy away from this burden and therefore refrain from offering their goods across borders. Consumers in small Member States are particularly affected by this. The Commission's proposals **mean that, in relation to cross-border sales, online traders have fewer, if any, national peculiarities to take into account. Consumer confidence, and therefore the consumer's willingness to undertake cross-border online purchasing, increases as a result.** Expectations should not be too high, however, as consumers prefer to buy locally due to the language and national preferences, e.g. for certain brands.

Lower costs for cross-border parcel deliveries and improved quality, such as faster delivery, facilitate cross-border online trade. Measures to increase price transparency lead to stronger competition between delivery operators which, in turn, brings about a decrease in prices. In addition to the price, however, quality should also be made transparent. Otherwise there is a risk of a price war which will be detrimental to quality. The Commission should refrain from measures which go beyond the improvement of price transparency such as price caps and quality requirements: if price and quality are determined by the Commission rather than by the market, there is a risk that less attention will be given to the wishes of the consumer. Thus there is a danger that quality will suffer if prices are too low.

The other measures, proposed by the Commission to improve cross-border parcel delivery, reiterate established demands. They can essentially be found in the Roadmap for Parcel Delivery [COM(2013) 886; see [cepPolicyBrief](#)].

The Commission's proposal to ban "unjustified geo-blocking", cannot be fully assessed because, in this Communication, the Commission does not explain what it considers to be "unjustified geo-blocking". According to a [Press Release](#) from the Commission of 6 May 2015, it considers it to be "a discriminatory practice used for commercial reasons, when online sellers either deny consumers access to a website based on their location, or re-route them to a local store with different prices". A ban on "unjustified geo-blocking" **will have the effect of aligning** – apart from the differing taxes and transport costs – **the prices in online trade EU wide. This is not necessarily advantageous for the consumer, however.** Although the price may fall in some Member States, in others it may rise. **In the extreme case, the price will become aligned at the level of the**

most expensive Member State. A general ban on "unjustified geo-blocking" is not therefore in the interests of the consumer.

Such a ban is not necessary as competition law already sets limits on "unjustified geo-blocking". Thus agreements between competitors which are harmful to competition within the EU are prohibited (Art. 101 (1) TFEU). Even geo-blocking in the context of vertical agreements on distribution rights in a specific area is not permitted under competition law. Thus the guidelines on vertical restraints on competition explicitly state that automatic transfer to the website of another trader is considered to be a hard-core restriction and is thus prohibited.

A change to EU copyright regulations allowing cross border use (portability) of lawfully acquired digital content is in the interests of both users and creators because, with improved portability, consumers will also be willing to pay higher prices or to buy more digital content. It is necessary to ensure, however, that such a regulation is not abused in order to evade national copyright laws.

Varying exceptions to copyright impede the cross-border use of protected content. Harmonising the exceptions, particularly by making these exceptions valid EU-wide, will strengthen the internal market (see [cepInput](#) Exceptions to copyright).

The proposal to improve the enforcement of copyright and other intellectual property rights reiterates the Commission's established position which it put forward in the Communication on the EU Action Plan on the enforcement of Intellectual Property Rights [COM(2014) 392; see [cepPolicyBrief](#)]

Where companies EU wide are only required to submit one value-added tax declaration, their administrative burden is reduced. This increases the willingness to supply goods across borders. **The proposal to have just one value-added tax audit** – in the company's home country – also reduces the administrative burden for companies. The proposal **carries the risk, however, that Member States will try to gain an advantage for their business location by way of lax tax audits.**

Legal Assessment

Legislative Competency

The legal basis for legislative follow-up measures is available, in particular, under the internal market competence (Art. 114 TFEU) and the competence to harmonise indirect taxes (Art. 113 TFEU).

Subsidiarity

Dependent on the design of the follow-up measure. Probably unproblematic, however, due to the cross-border nature of the internet.

Proportionality with Respect to Member States

Dependent on the design of the follow-up measure.

Compatibility with EU Law in other Respects

Dependent on the design of the follow-up measure. In particular, it will be necessary to examine whether – as the Commission is planning – traders trading online with consumers can apply their national law in full or whether this is in breach of the "Rome I Regulation" (593/2008) which stipulates the opposite in the case of mandatory contractual provisions (Art. 6 Rome I Regulation). A breach of Rome I Regulation could only be avoided if, as part of the planned harmonisation of the laws, all mandatory contractual provisions for online trade which serve to protect the consumer, are harmonised EU wide. This would require legislation in the form of a Regulation.

Impact on German Law

Dependent on the design of the follow-up measure. It is probable that changes to the Civil Code, the Copyright Act and the Value Added Tax Act will be necessary.

Conclusion

Harmonised contractual provisions for online businesses mean that online traders will have fewer national peculiarities to take into account when it comes to cross-border sales, and also that consumer confidence will increase. A ban on "unjustified geo-blocking" will result in EU-wide price alignment, in the extreme case, at the level of the most expensive country. The proposal for just one value-added tax audit to be carried out EU wide carries the risk that Member States will try to gain an advantage for their business location by way of lax tax audits.