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Geo-blocking in the Digital Single Market

Impact Assessment (SWD(2016) 173, SWD(2016) 174 (summary)) of a Commission proposal for a regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on place of residence or establishment or nationality within the Single Market (COM(2016) 289 final)

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [Impact Assessment](#) (IA) accompanying the above proposal ([the proposal](#)), submitted on 25 May 2016 and referred to Parliament's Committee on Internal Market and Consumer Protection¹.

The Commission's Digital Single Market (DSM) Strategy² includes a legislative initiative to end unjustified geo-blocking³. It is also included in the Commission's Work Programme for 2016. Geo-blocking results in consumers being prevented from making purchases or being charged more because of their IP address, postal address or the registration country of their credit card. In its 2015 resolution, [Towards a Digital Market Act](#), the European Parliament supported the DSM Strategy and the geo-blocking initiative proposed therein.

The existing Services and E-Commerce directives⁴ are aimed at creating a truly integrated single market by removing regulatory and administrative barriers for service providers across Europe. This proposal will therefore complement these two acts by covering the issue of discrimination based on nationality, place of residence or place of establishment. The scope of the IA is explicitly limited 'to the intersections of the sectorial scopes' of the Services and E-commerce directives. This is because other sectors (notably health care services, financial services and audiovisual services for which supervision is set differently compared to the services that can be provided under the above directives) were considered to be too specific or too sensitive (IA, pp.4-5). Non-EU traders wanting to provide their services within the single market would also be concerned by the provisions of the proposal.

Problem definition

The IA offers an extensive presentation of the problem. The Commission makes a distinction between justified and unjustified geo-blocking; if geo-blocking occurs because businesses incur 'significant extra complications and costs, for example because of the existence of additional regulatory or other obstacles for cross-border sales, they are likely to be considered justified' (IA, p.9). Although a case-by-case assessment would ideally be required to make the distinction, unjustified geo-blocking can be identified in several situations, notably when 'local and

¹ For a legislative briefing on the proposal see: Tambiama Madiaga, [Geo-blocking and discrimination among costumers in the EU](#), EPRS Briefing, July 2016.

² [COM\(2015\)192](#).

³ The DSM strategy describes geo-blocking as 'practices used for commercial reasons by online sellers that result in the denial of access to websites based in other Member States' (p. 6). For further information and statistical background see: Tambiama Madiaga, [Digital Single Market and geo-blocking](#), EPRS At a glance, May 2015; Eulalia Claros, Tambiama Madiaga, [Cross-border online sales in the EU](#), EPRS Briefing, July 2016.

⁴ [Directive 2006/123/EC](#) of the European Parliament and of the Council of 12 December 2006 on services in the internal market; [Directive 2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').

foreign customers are in a very similar, if not identical, position (i.e. the trader does not bear any cost linked to the nationality, place of residence or place of establishment of the customer; he does not have to arrange for cross-border delivery, pay VAT in another country or apply another Member State's consumer legislation)' (IA, p.9). Foreign customers are thus sometimes prevented from buying a physical good even if they would be willing to pick up the good from the trader's country or arrange for cross-border delivery themselves. They are sometimes also prevented from accessing electronically supplied, non-audiovisual copyright-protected content services, even if the trader has the required rights for the relevant territories. Customers moving to another country to receive a service in the trader's location at times face higher prices than domestic customers (such as when staying at a hotel or renting a car, etc.). Moreover, 27% of customers surveyed by the Commission who had asked the trader for information regarding restrictive practices never received an answer (IA, p.11). Customers also frequently experience automatic re-routing to another website, where traders identify the location of customers through IP-tracking and redirect them to a website targeting customers from that area. Around one-quarter of websites do not accept or offer foreign means of payment and 32% of these websites did not offer deliveries to the country of the consumer (IA, pp.12-13). It is estimated that unjustified geo-blocking 'is practiced by between 2% and 27.6% of websites' (IA, p.14).

The IA identifies two problem drivers, namely market segmentation along national borders and ineffective enforcement of the existing legal framework. The IA explains that market segmentation is a legitimate way to take account of different markets and profit from a commercial strategy. 'It is only a problem when the company refuses requests from consumers based in another country than the one targeted in order to enforce this market segmentation, when the foreign consumer is effectively in the same situation as the national consumer' (IA, p.17). Regarding ineffective enforcement, the IA refers to Article 20 of the Services Directive, which does not clarify justifications for differences in treatment based on a customer's nationality or place of residence or establishment. To determine this, the reasons invoked by the trader need to be assessed according to objective criteria (Recital 95 of the Services Directive). However, this creates uncertainty, as the assessment must always be made on a case-by-case basis. Moreover, there is currently no cooperation between national authorities in terms of the enforcement of Article 20, as it is not included in the Annex of the Consumer Protection Cooperation (CPC) Regulation⁵. The Commission is proposing the inclusion of the provisions of the Services Directive in the proposal for a new, redrafted CPC Regulation⁶. Guidance on Article 20⁷ was issued by the Commission in 2012, but 'the Commission is not aware of any trader having been sanctioned for infringing the non-discrimination provision of [Article 20(2)]' (IA, p.19). Furthermore, the Commission points out that no Member States took action to amend their national provisions transposing the Article and complaints received from consumers are recurring (IA, p. 19). More information regarding the effectiveness of Article 20 is included in Annex 8 of the IA (IA, p.124).

Objectives of the legislative proposal

The two *general* objectives of the Commission proposal are to (a) improve the access to goods and services for customers in the DSM and (b) prevent unjustified discrimination of customers in the Single Market. The Commission also presents four *specific* objectives as being to (1) improve transparency for customers by enabling access to websites/applications throughout the Single Market; (2) prevent unjustified differences of treatment in access to goods and services for customers throughout the Single Market; (3) improve public enforcement in relation to unjustified geo-blocking and other discriminations based on the place of residence or establishment or nationality; (4) increase legal certainty for businesses for cross-border transactions (IA, p.24). The objectives appear to be in line with the way in which the problem is defined.

In the section on 'Monitoring and Evaluation' the IA sets forth two *operational* objectives:

⁵ Regulation (EC) No 2006/2004 on [consumer protection cooperation](#) (CPC Regulation).

⁶ [COM\(2016\)0283](#). Currently undergoing consideration at first reading in the Committee on Internal Market and Consumer Protection of the European Parliament. For a legislative briefing on the proposal see: Jana Valant, [Consumer Protection Cooperation](#), EPRS Briefing, September 2016. For an initial appraisal of the impact assessment of the proposal see: Hubert Dalli, [Cooperation on the Enforcement of Consumer Protection Laws](#), EPRS Briefing, August 2016.

⁷ Commission Staff Working Document with a view to establishing guidance on the application of Article 20(2) of Directive 2006/123/EC on services in the internal market, SWD(2012) 146.

- to decrease the share of websites engaging in unjustified blocking of access to users from other EU Member States, and
- to decrease the share of consumers experiencing unjustified geo-blocking.

These appear to correspond to the recommended ‘SMART’ parameters (specific, measurable, achievable, realistic, time-bound) for operational objectives found in the Commission’s Better Regulation Guidelines.

Range of options considered

The IA presents six policy options, including the baseline scenario. Three other options were discarded, apparently on the grounds that they were considered ineffective and inappropriate.⁸

Option 0: Baseline scenario: no policy change

This option ‘implies implementing Article 20 of the Services Directive, the current provisions of the Consumer Rights Directive and the 2012 Guidance document on Article 20’, as well as the adoption of a number of legislative initiatives which are currently being examined by parliament, namely on contracts for the supply of digital content, on contracts for the online and other distance sales of goods, on consumer protection cooperation and on cross-border parcel delivery (IA, p.24).

Option 1: Improving transparency and enforcement

Traders would need to be transparent about the reasons for justified restrictions for accessing a service (e.g. VAT registration required in the country of the consumer and lack of knowledge about labelling rules and consumer laws in the country of the consumer). They would have to either provide justifications upon requests from customers ‘within a reasonable timeframe to be set in a legislative proposal’ or provide such justifications in an upfront manner (e.g. disclaimers and information could be added to their website) to avoid administrative burdens⁹ (IA, p.25). Traders would not be obliged to explain price differentials. This option would apply to all companies, including SMEs, and would be added in the annex of the new redrafted CPC Regulation to ensure enforcement.

Option 2: Banning blocking of access

This option would make geo-blocking illegal, ‘with a very limited set of exceptions (only if required by EU law or national law in accordance with EU law, e.g. e-commerce Directive)’ (IA, p.25). Consumers would need to give their consent to be re-routed and the original targeted website should always remain accessible. If blocking or re-routing is required, consumers must be informed. This option would apply to all companies, including SMEs, and would be added in the annex of the CPC Regulation to ensure enforcement¹⁰.

Option 3: Option 2 + equal treatment in specific situations (‘shop like a local’)

The option would make geo-blocking illegal and would ensure non-discrimination in ‘well-defined situations where no or only minimal additional costs associated to cross-border sales are created’ (IA, p. 26). For *sales of tangible goods* (such as books), foreign customers would be able to contract under the same conditions (including delivery options) as residents of the country where the trader operates. Regarding *sales of electronically supplied services* (e.g. cloud services, website hosting, firewalls, etc.), where the issue of physical delivery does not arise, customers should be entitled to purchase electronically supplied services from any trader and the latter would be obliged to contract unless he invokes justifications unrelated to nationality or place of residence or establishment. Traders could use the VAT Mini One-Stop Shop for VAT clearance. Regarding the *supply of goods and services in the location where the trader conducts its business outside the customer’s home Member State*, traders would not be allowed to refuse to sell or differentiate prices at the same point of sale. Traders would be able to set different

⁸ IA, p.31.

⁹ This would mitigate the administrative burden of constantly dealing with requests. Companies would also only be required to reply in the language(s) announced in the general terms and conditions (IA, p.25).

¹⁰ In both options 1 and 2, enforcement rules would not apply to B2B (business to business) issues, where Member States could designate enforcement authorities, but there would otherwise be no difference between B2B and B2C (business to consumer) contexts (IA, pp.25-26).

prices across different websites, but customers would be free to choose from which country website to buy. Traders would be able to invoke justifications unrelated to nationality or place of residence. In all these cases B2B (business to business) transactions would be included, though in the case of sale of tangible goods products intended for resale would be excluded to avoid circumvention of competition rules.

In the case of *sales of electronically delivered non-audiovisual content services* (i.e., music, e-books and software) similar considerations would apply, provided that the trader has the required copyrights for the relevant territories. The IA considers, however, that the potential inclusion of such situations in the non-discrimination obligation requires further analysis.

Further to the adoption of the Payment Services Directive, by 2018 traders would not be allowed to reject EEA credit and debit cards, but extra costs in card transactions could be incurred by consumers. Option 3 also includes the declaration that any agreement regarding passive sales that would lead to a violation of the proposal is void.

Option 4: Option 2 + list of justifications deemed not to be based on objective criteria

The option would make geo-blocking illegal and prohibit differences of treatment unless justified by objective criteria. The option would involve the drawing up of a list of criteria that cannot be accepted for traders to justify a difference in treatment. This includes reasons such as 'cost for shipment' (if the consumer is willing to pay for the additional cost) and 'cost or difficulty of bank transfers' in the eurozone. A full list can be found on page 29 of the IA. The option would be applicable to all services (online and offline) and to all SMEs, but would exempt micro enterprises¹¹.

Option 5: Option 3 + obligation to serve customers across the EU

Under this option companies that already deliver within their own country would not be able to refuse delivery to another Member State, though they could charge for extra delivery costs. This option goes further than Option 3, 'where the trader would not be obliged to deliver the ordered tangible good to the country of the customer' (IA, p.30). The concept of trader would be expanded to include all branches or subsidiaries of a given company. A trader would be obliged to provide similar after-sale services in all Member States where the trader is present¹². SMEs would be exempted from this option¹³.

While the IA presents a wide range of options, it does appear that more consideration is given to **Option 3**, which is ultimately the Commission's **preferred option** (IA, p.50). The presentation of the options also occasionally lacks clarity. Thus, the table of options on page 50 of the IA appears to suggest that the transparency obligation presented under Option 1 (namely, the upfront and upon request explanations) is also included in Option 3 and thus Options 4 and 5 (IA, p.52)¹⁴. This, however, is not evident from the description of the options. Also, the difference between Options 3 and 4 could have been better delineated.

Scope of the Impact Assessment

The IA seems to privilege the assessment of the *economic* impacts of the policy options over the assessment of other impacts. The IA notes that there are no *environmental* impacts, or that they are not measurable (IA, p.36). This is somewhat to be expected in light of the single market focus of the proposal. However, more emphasis could arguably have been placed on the assessment of *social* impacts. For example, the effects on employment patterns and the impact on the affordability of goods and services for key social groups are generally not assessed. Employment patterns are analysed only for Option 3, at the request of the Commission's Regulatory Scrutiny

¹¹ This covers B2B situations excluding products intended for resale resold to avoid circumvention of competition law (IA, p.30).

¹² 'For instance, if a Polish citizen living in Germany buys a product in Poland and the trader has a branch or a subsidiary in Germany where the same product is offered, the Polish customer should not have to go back to Poland to benefit from after-sale services' (IA, p.30).

¹³ This option would also cover B2B situations (IA, p.30).

¹⁴ The IA states that Option 3 envisages ex-ante and ex-post explanations in the trader's own language and by mail, 'whichever is less burdensome for the company' (IA, p.52). This seems to correspond to the general disclaimer on the trader's website justifying restrictions of access and the writing of a reply in the language of the trader proposed under Option 1 (IA, p.25).

Board, and are assessed under the heading of 'Impact on Member States' instead of under the more appropriate heading of 'Social impacts' (IA, pp.42-43).

Nonetheless, the Commission analyses many aspects of economic impacts for each option, such as the impact on the operating costs and conduct of businesses, on the single market, on SMEs and microenterprises, on the competitiveness of businesses, on consumers and households, on public authorities, and the macroeconomic impact. Although this widens the scope of impacts, the analysis for most aspects remains somewhat generic, without going into any depth. This is the case for all of the options, apart from Option 3, for which more detail and data is provided. It would also have been useful if the IA had provided more quantitative data on the envisaged compliance costs for businesses.

After a comparison of the options, Option 3 was chosen for being more proportionate, as it would not require cross-border deliveries by traders and would allow them to choose when to provide information to consumers (upon request or upfront). It would also reach the objective of improved enforcement in an efficient way by using the existing CPC network (IA, p.50).

Subsidiarity / proportionality

Article 18 TFEU establishes the prohibition of discrimination between persons on the basis of nationality. Articles 34 and 56 provide for the free circulation of goods and the freedom to provide services, respectively. The IA makes reference to jurisprudence of the Court of Justice clarifying the non-discrimination provisions set out in Article 56 TFEU, in particular its interpretation that discrimination is prohibited not only on the basis of nationality, but also on the basis of the place of residence (IA, p.22).

Regarding justification for EU intervention, the IA states that although Member States have fully transposed the Services Directive, including Article 20, 'national laws and regulations remain little specific on [the point of unjustified geo-blocking]' and there is no clarity on 'how the principle of non-discrimination is actually applicable and effective in practice' (IA, p.23). The IA argues that a clear framework at EU level is lacking whereas the cross-border nature of the problem means that this is the level at which it can be addressed more effectively and efficiently, the principle of subsidiarity thus being respected.. It goes on to explain that the added value of EU level action is to create equal rights and obligations for businesses and consumers, ensure there is a level playing field to allow consumers and traders to benefit from the internal market, and provide enforcement authorities the power to act effectively against discriminatory practices (IA, p.23). The deadline for submissions of reasoned opinions by national parliaments was 26 July 2016. One [reasoned opinion](#) was received from the Austrian Federal Council which argues that 'the contracting obligation provided for in the proposal is excessive and appears to be inappropriate, as it unnecessarily interferes with the competence of the Member States'.

In discussing proportionality, the IA maintains that the preferred option would have a limited impact on current trading practices, as it would not force traders to contract and deliver cross-border. It argues that proportionality would also be respected as the proposed transparency obligation (which requires traders to inform customers about the reasons for automatic re-routing) has been designed to limit administrative burdens; it allows traders to provide ex-ante or ex-post explanations by email or on the trader's website in the trader's own language (IA, p.52).

With regard to the choice of policy instrument, after considering the experience with Article 20 of the Services Directive, the IA concludes that a non-binding instrument would not be appropriate in the circumstances and that a legislative instrument is therefore the best way to reach the objectives. In contemplating the most appropriate legislative instrument, the IA considers that a directive would leave room for Member States to choose how to implement the relevant rules and 'would not necessarily create directly enforceable rights and obligations which customers and trader could [invoke] before national courts' (IA, p.51). Therefore, the preferred instrument is a regulation, as it would allow for quick implementation and full harmonisation (IA, p.51).

Budgetary or public finance implications

The explanatory memorandum accompanying the legislative proposal states that the proposal would not have any impact on the budget of the EU. The IA notes that enforcement of the preferred option is to be carried out by the existing structures coordinated under the CPC Regulation, meaning that no new organisational costs are envisaged for public authorities and Member States.

SME test / Competitiveness

In its analysis of the impacts of the policy options, the IA gives specific consideration to the impact on competitiveness and SMEs and microenterprises. It reasons that the competitiveness of businesses would not be negatively affected by the options, as they would apply to EU and non-EU traders alike. The IA claims that the increased competition created by the fact that customers have a greater choice of traders (online and offline) would bring about a reduction in prices and hence an increase in sales.

Microenterprises and SMEs were not excluded from the preferred option because 'it would result in consumer detriment as customers would not be able to easily determine the rights they enjoy' since these would depend on the size of the company (IA, p.52). Their inclusion would also enable them to increase their competitiveness by reaching more potential consumers (IA, p.53).

The IA highlights that in accordance with the Rome I Regulation¹⁵, under the preferred option, if the trader does not direct its activities to consumers in a Member State, the trader can decide to apply the law applicable in its place of establishment and it does not need to abide by any more stringent consumer contract rules in force in the Member State of the consumer (IA, p.40).

On the other hand, SMEs already targeting the country of the customer would not incur any additional costs since, in the case of delivering tangible goods, they would not need to register for VAT, and since, when providing a service in the premises of the trader (e.g. leisure activities, hotels, car hire), the applicable VAT is that of the country where the service is provided. For the sale of digital services, SMEs would need to pay foreign VAT, but not register for it, as the Mini One-Stop Shop¹⁶ applies. However, this would only be applicable to SMEs that are already registered for VAT; those that are currently not registered would be exempted from the non-discrimination requirement, as it would create burdensome obligations (IA, pp. 29, 40).

Moreover, the IA considers that the additional transparency requirements envisaged under Option 2 (which are also part of Option 3) to inform consumers about the reasons for automatic re-routing are likely to have a negligible impact on microenterprises, as it is unlikely that microenterprises make distinct sales efforts for different national markets.

Simplification and other regulatory implications

In general, the proposal is claimed to be coherent with the Single Market Strategy and the overall objective of the DSM Strategy, which aims to 'make it easier for businesses to sell goods and services to nationals or residents from other Member States' (IA, p.2). The IA states that the proposal is also in line with, and complementary to, numerous current or forthcoming legislative proposals, including proposals regarding contracts for the supply of digital content, parcel delivery, copyright, modernisation of VAT for cross-border e-commerce and revision of the CPC Regulation (IA, p.53). The IA notes how some of these initiatives seek to reduce justified geo-blocking by taking away 'part of the justifications often invoked by companies' (IA, p. 20), whilst the proposal under examination targets *unjustified* geo-blocking. This is one aspect of the IA regarding which the Commission's Regulatory Scrutiny Board requested further clarification.

¹⁵ Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I).

¹⁶ The VAT mini one-stop allows the possibility for businesses to account for VAT on the supply of services to consumers in Member States other than those in which they are registered for VAT purposes.

Quality of data, research and analysis

The Commission had recourse to outside experts in preparation of the IA and used a broad range of studies, such as the [Mystery Shopping Survey](#) (a survey of approximately 10 500 websites in the EU, carried out between October and December 2015 by GFK Belgium) and a Flash Eurobarometer (conducted in February 2016 to assess the extent of geo-blocking that businesses face) (see IA, Annex 6 and 10 respectively). In addition, seven other studies or sources relevant to geo-blocking were used (see IA, Annex 5). These sources appear to provide up-to-date data that generally substantiates the IA, particularly the problem definition and scope of impacts sections.

Moreover, a *quantitative* assessment was made of the economic impact of policy options 3 and 5. Annex 4 explains the methodology, assumptions and limitations of the economic model used to make this assessment. The Commission explains and justifies the exclusion of Options 1 and 2 from the economic model on the grounds that the economic impacts would likely be marginal (IA, p.84). It does not seem to explain the decision to exclude Option 4. Also, it is not always evident how the findings on the economic impacts of Option 3 in the IA correspond to the data presented in Annex 4¹⁷.

Stakeholder consultation

An open public consultation on geo-blocking was held between 24 September and 28 December 2015, to which the Commission received 433 responses (of which 58% from consumers and 18% from business associations¹⁸) (IA, p.63). The Commission identifies the stakeholders consulted and what they were consulted on in Annex 2. Apart from the open public consultation, meetings with various stakeholders (such as Member States and business and consumer organisations) were held in 2015 and 2016. Stakeholders' views seem to be transparently reflected throughout the IA.

According to Annex 2, 89.4% of consumers and consumer organisations responding to the public consultation stated that they had been subject to geo-blocking, in particular in the form of refusal to sell (including automatic re-routing), refusal to deliver, price difference when shopping cross-border and refusal of a discount. Overall, companies and business associations agree that geo-blocking create significant barriers to trade, though they cite VAT rules, divergent national regulations, consumer protection laws and delivery costs as reasons for geo-blocking (IA, pp.67-68). Consumers and their organisations broadly agree with all of the Commission's proposed policy options. Conversely, over half of respondents from companies and business associations *disagree* with the Commission's preferred option. Only Option 2 was not rejected by the majority of companies and business associations (IA, p.71)¹⁹. This position of companies and business associations, although indicated in Annex 2, seems to be presented less plainly in the analysis of impacts. (IA, p.36).

Although the questionnaire contained a disclaimer 'excluding geo-blocking or other restrictions related to copyright and licencing practices' (IA, p. 106), several stakeholders raised such issues, indicating the particularly sensitive nature of the issues and a lack of certainty as to their inclusion or otherwise within the scope of the proposal²⁰.

Monitoring and evaluation

The IA states that the monitoring process 'could consist of two phases', namely: (1) a short-term process that would start right after the adoption of the legislative proposal focusing on how the regulation is applied in order to ensure a consistent approach, including meetings with the Commission and relevant stakeholders to facilitate

¹⁷ e.g., it is not clear how the increase in 1.1% of cross-border sales of electronic goods was calculated or where it can be found in Annex 4 (IA, p.38).

¹⁸ Respondents also included: companies (13.5%), consumer organisations (6%), Member State authorities (3%), and consumer authorities (1.5%) (IA, p.63).

¹⁹ Some companies said there should not be any policy response to geo-blocking, with some pointing out the importance of competition. 'Common rules facilitating cross-border trade are favoured by other [companies and business associations]. Finally, non-legislative action or guidelines are mentioned as preferred by several [of these] respondents' (IA, p.72).

²⁰ Companies and business associations, including one Member State, called for clarification as to whether the initiative would address copyrighted related geo-blocking. Another Member State presented the case for the exclusion of such content (IA, pp.67-68).

the transition to new rules; and (2) a mid- to long-term process focusing on the direct effects of the regulation's rules starting two to three years after its application (IA, p.54). The IA presents two indicators²¹, corresponding to the two operational objectives, to monitor the initiative's progress (IA, p.55). Finally, the evaluation would take place two years after the application of the regulation, with a particular focus on assessing 'whether the prohibition of non-discrimination should also apply to electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works' (IA, p.54).

Commission Regulatory Scrutiny Board

The Commission's Regulatory Scrutiny Board (RSB) first issued a [negative opinion](#) on 8 April 2016. A [positive opinion](#) was then issued on 21 April 2016 on a re-submitted version of the IA, in which the RSB called for further improvements. In general, these appear to have been addressed to some extent. It seems, however, that the RSB's request in its first opinion for additional explanation of the interaction with other initiatives has not been fully addressed.

Coherence between the Commission's legislative proposal and IA

In general, the Commission's legislative proposal largely follows the recommendations of the IA and reflects Option 3. It takes over the IA's evaluation arrangements, including the possibility of covering electronically delivered copyright protected works or other protected subject matter within the scope of the regulation (Article 9.2).

Conclusions

The IA clearly defines the problem and appears to use up-to-date data and research throughout, especially in the problem definition and in establishing the scope of the impact assessment. At times, however, the presentation of the policy options lacks clarity. The IA seems to provide sound justification for the proposal, but appears not to fully address the RSB's recommendation in its first opinion for a better description of the potential interaction of all the legislation that would target justified geo-blocking. This is something which might merit attention, particularly given that many of the parallel initiatives concerned are currently going through Parliament.

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Internal Market and Consumer Protection (IMCO), analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

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www.europarl.europa.eu/thinktank (Internet) – www.eptthinktank.eu (blog) – www.eprs.sso.ep.parl.union.eu (Intranet)

²¹ 1. Variation of websites refusing access or sales to customers based on geographical residence, analysed to identify unjustified refusals. 2. Variation of customers experiencing geo-discrimination, analysed to identify unjustified refusals.