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First short-term review of the Geo-blocking Regulation

Accompanying the document

Report

from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the first short-term review of the Geo-blocking Regulation

{COM(2020) 766 final}

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1. INTRODUCTION

1.1. Context

The Geo-blocking Regulation (EU) 302/2018 (hereinater "the Regulation") is one of 28 measures of the Digital Single Market strategy[1] adopted during the last Commission mandate with a view to ensure better access conditions to goods and services for individuals and businesses. The Regulation was adopted by the European Parliament and Council on 28 February 2018 and became applicable on 3 December 2018.

This Regulation has been part of a comprehensive package of measures to realise the potential for the digital economy and society in Europe through the removal of regulatory and other obstacles between Member States, in order to deliver the positive effects of a true Digital Single Market (DSM). The main aim of the package was to break down barriers to cross-border online activity in order to: (i) ensure better access to goods and services offered online; (ii) build trust for consumers and greater certainty for businesses; and (iii) reduce transaction costs and administrative burdens for businesses when trading online across borders. The package constitutes an inter-linked set of measures, which are intended to reinforce each other so that the whole is greater than the sum of its parts. Many of the measures adopted have already entered into force; others will become applicable in the forthcoming months or years.

Within this context, the Geo-blocking Regulation addresses the specific problem of geo-blocking and unjustified discrimination of customers purely based on their nationality, place of residence or place of establishment, in order to facilitate access to cross-border offers within the internal market. At the same time, this Regulation does not require traders to actively sell and deliver across borders. Any restriction affecting cross-border sales may, however, still need to be assessed on a case-by-case basis under Treaty provisions and existing EU law.

Alongside the Regulation other measures have been adopted to facilitate cross-border e-commerce by both consumers and traders, including in particular by improving transparency of delivery prices for consumers and by facilitating compliance with consumer protection requirements when directing activities cross-borders (see in particular Section 2.3.2), as well as measures facilitating cross-border access to content.

In particular:

[1] Communication "A Digital Single Market Strategy for Europe" COM(2015) 192 final

- new rules for the reduction of VAT-related administrative burden of cross-border transactions.[2] These rules introduce major simplifications for cross-border sales and will be applicable as from 1 July 2021.
- the Consumer Protection Cooperation (CPC) Regulation 2017/2394[3] has replaced the old 2006/2004[4] CPC Regulation as from 17 January 2020, providing national authorities with stronger powers to detect irregularities and to reinforce cooperation.
- a new Regulation[5] in the area of cross-border parcel delivery services has been applicable as from 2018. This Regulation aims to make prices for cross-border parcel delivery services more transparent and affordable. It further aims to increase regulatory oversight of the European parcel market.
- in the framework of the digital contracts rules[6], two Directives[7] have been adopted in 2019, harmonising the main mandatory consumer rights applicable to the supply of digital content and sales of goods. These Directives will need to be transposed by Member States by 1 January 2022. In addition, in the framework of the "New Deal for Consumers" initiative, the Commission proposed, in April 2018, a package of measures[8] aiming in particular at improving compliance with EU consumer protection legislation. The Directive on better enforcement and modernisation of Union consumer law will be applicable as from 28 May 2022. The adoption of the Directive on Representative actions is being finalised.

[2] https://ec.europa.eu/taxation_customs/business/vat/digital-single-market-modernising-vat-cross-border-ecommerce_en

[3] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (Text with EEA relevance) OJ L 345, 27.12.2017, p. 1–26.

[4] Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)Text with EEA relevance, OJ L 364, 9.12.2004, p. 1–11.

[5] Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services.

[6] https://ec.europa.eu/info/business-economy-euro/doing-business-eu/contract-rules/digital-contracts/digital-contract-rules_en

[7] Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services and Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.

[8] Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules. Regarding the Directive on representative actions for the protection of the collective interests of consumers and repealing the Injunctions Directive 2009/22/EC ('Representative Actions Directive'), the co-legislators reached a political agreement on 22 June 2020 in view of its formal adoption by the end of 2020. For more information: https://ec.europa.eu/info/law/law-topic/consumers/review-eu-consumer-law-new-deal-consumers_en.

- as part of the ongoing modernisation of the EU copyright framework, new rules have been adopted in 2017[9] on portability of online content services. These rules, which have been applicable since 1 April 2018, allow Europeans to travel with digital content that they have subscribed to at home. This includes for instance, downloading of films or streaming of sports events. In addition, measures have been adopted that facilitate the licensing of ancillary on-line services provided by broadcasters[10] in order to enhance the cross-border distribution of television and radio programmes. The new rules have to be transposed by 7 June 2021.
- moreover, in 2019 rules for audiovisual media have been adopted[11], to be transposed by 19 September 2020.

The Geo-blocking Regulation attracted significant attention of consumers as part of this package, not least since it is one of the measures directly empowering consumers with specific rights against cross-border traders. In order to increase awareness of the rights and obligations under the Regulation, the Commission has published an extensive Q&A document ahead of the date application in 2018. This Q&A includes examples aimed help consumers, traders and Member States alike to implement the Regulation[12] effectively.

As a result, in February 2019, only a few months after its start date for application, 50% of consumers where already aware of the measures, and more than half of these considered themselves to be sufficiently informed on the content of the Regulation[13].

1.2. Specific provisions and objectives of the Regulation

Overall, the Regulation aims to improve access to goods and services for customers and preventing unjustified discrimination of customers in the Single Market. It does so by pursuing four specific objectives[14], namely:

[9] Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market,

[10] Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC.

[11] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

[12] A first version of the Q&A document was released in March 2018, subsequently incorporated in a wider version published on 27 September 2018, which also included additional information about the wider context of most relevant DSM measures related to cross-border commerce, available at https://ec.europa.eu/digital-single-market/en/news/geo-blocking-regulation-questions-and-answers

[13] Flash Eurobarometer 477b (2019).

- improving transparency for customers by enabling access to websites or apps throughout the Single Market;
- preventing unjustified differences of treatment in access to goods and services for customers throughout the Single Market;
- improving public enforcement in relation to unjustified geo-blocking and any other discrimination based on the place of residence, establishment or nationality;
- increasing legal certainty for business for cross-border transactions.

In particular, Article 3 of the Regulation bans the blocking of access to websites and the re-routing of user without the customer's prior consent. This increases price transparency by allowing customers to access different national websites.

Moreover, Article 4 of the Regulation defines specific situations when there can be no justified reason for geo-blocking or other forms of discrimination based on nationality, residence or establishment. In these situations, customers from another Member State should be granted access to goods and services under the same conditions, as those applied to local customers (known as "shop-like-a-local"), including price and delivery limitations. These situations are: the sale of goods with delivery or pick-up in area already served by the trader; the sale of electronically supplied services and the sale of services provided by the trader in a specific physical location, including when booked on-line (such as accommodation or car rental services). However, those electronically supplied services, the main feature of which is the provision of access to, and use of, copyright protected works are excluded from Article 4 of the Regulation.

Finally, while traders remain free to accept whatever kind of payment means they prefer, Article 5 of the Regulation includes a specific provision on non-discrimination as regards the range of means of payment they accept, provided that these payments are made through electronic transactions, in a currency accepted by the trader and pursuant to applicable authentication requirements. It therefore covers situations where different treatment is the result of a customer's nationality, place of residence or place of establishment, the location of the payment account, the place of establishment of the payment services provider or the place of issue of the payment instrument.

[14] See SWD(2016)173 final Impact assessment accompanying the document proposal for a Regulation of the European Parliament and of the Council on adressing geo-blocking and other forms of discriminiation based on place of residence or establishment or nationality within the Single Market, page 24 on the specific policy objectives.

These directly applicable rights and obligations are complemented by specific provisions meant to facilitate their application by traders and ensure their effective enforcement.

First, Article 6 of the Regulation ensures that traders cannot be bound by vertical contractual agreements imposing practices concerning passive sales in contradiction with the prohibitions laid down in the Regulation. Such agreements are to be considered void without the need to proceed with an assessment pursuant to competition law.

Moreover, in order to ensure effective enforcement of the prohibitions, and assistance to consumers, the Regulation requires Member States to designate a body or bodies responsible for enforcement of the Regulation and to define measures applicable to infringements. In particular, consumers are to benefit from strengthened support in the enforcement of the Regulation, as Member States are required to set up assistance bodies to provide practical assistance. Furthermore, the Regulation is among the instruments covered by the Consumer Protection Cooperation (CPC) Regulation [15] (applicable from 17 January 2020), as well as by the Injunction Directive[16] (whose revision has been subject to a political agreement on 22 June 2020).

1.3. Scope of the Regulation

The scope of the Regulation is aligned to the the scope of the Services Directive, including the exclusions from scope laid down in its Article 2(2). This basic choice thus mirrors the broad horizontal scope of the Services Directive, which ensures the freedom to provide services across borders in a broad range of sectors. It also mimicks the scope of Article 20(2) of the Services Directive, which first implemented the general non-discrimination principle enshrined in the Treaty in the field of services.

In view of the above, the Regulation does not apply to the following sectors:

- Audiovisual services, as defined in the Audio Visual Media Services Directive (AVMSD)[17], whatever their manner of production, distribution and transmission, and radio broadcasting;

[15] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (Text with EEA relevance) OJ L 345, 27.12.2017, p. 1–26

[16] Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests, OJ L 110, 1.5.2009.

[17] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) OJ L 95, 15.4.2010, p. 1–24

- Retail financial services (although unjustified differential treatment relating to certain methods of payment is covered);
- Services in the field of transport;
- Non-economic services of general interest;
- Electronic communication services and networks, and associated facilities and services;
- Services of temporary work agencies;
- Healthcare services, regardless of whether or not they are provided via healthcare facilities or the ways in which they are organised and financed at national level or whether they are public or private;
- Gambling activities, including lotteries, gambling in casinos, and betting transactions;
- Activities connected with the exercise of official authority as set out in Article 45 of the Treaty;
- Social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;
- Private security services;
- Services provided by notaries and bailiffs, who are appointed by an official act of government.

In addition, Article 4 of the Regulation prohibiting discrimination of customers in the provision of the services or sale of goods does not apply to non audiovisual electronically supplied services, whose main feature is the provision of access to and use of copyright protected works. This includes, for instance e-books, music, games and software provided on-line. However, non-audiovisual electronically supplied services remain subject to all other provisions in the Regulation, including the prohibition to block or limit access to online interfaces on the basis of the nationality, residence or establishment of the customer and the discrimination of some electronic payment means only on the basis of their "nationality".

Moreover, the Regulation applies to specific situations, such as those defined in Article 4, where no possible justification for a differential treatment based on residence or nationality can be found, so that other situations not falling within the hypothesis regulated by the Regulation (or partially excluded) are not concerned by the respective rights and obligations. In situations not covered by this Regulation but still concerning sectors and services covered by the Services Directive, however, the more general non-

discrimination principle enshrined in Article 20(2) of the Services Directive will continue to apply[18].

Finally, pursuant to Article 1(4) and (5), the Regulation is without prejudice to the field of taxation, as well as to the field of copyright and neighbouring rights.

1.4. Scope of the first short-term review of the Regulation

The Regulation addresses specific situations where traders cannot objectively justify blocking access or applying different conditions to customers. As such, the Regulation is naturally subject to evolution, taking into account the evolution of the internal market framework, and periodic review as provided for in Article 9 of the Regulation.

Regarding the first review, the co-legislators set a specific timeframe as well as a primary focus of the exercise. Article 9 clarifies that a first review should be carried out 2 years from the entry into force of the Regulation. Article 9(2) of the Regulation specifies that the "*first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing the scope of this Regulation, as well as the extent of the prohibition laid down in point (b) of Article 4(1) and whether this Regulation should also apply to electronically supplied services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form, provided that the trader has the requisite rights for the relevant territories*".

In this context, the Commission declared that it will look into:

- the way in which the Regulation has been implemented and has contributed to the effective functioning of the internal market
- the feasibility and potential costs and benefits arising from any changes to the scope of the Regulation

[18] According to this article, the general conditions of access to a service, which are made available to the public at large by the provider, shall not contain discriminatory provisions relating to the nationality or place of residence of the recipient, without however precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria. Unlike the specific unconditional cases regulated by the Regulation, the application of the non-discrimination principle as specified in Article 20(2) depends on a case-by-case assessment of the trader's practices and the existence of objective justifications for differential treatment. An explicative list of potential justifications for different treatment is included in Recital 95 of Directive 2006/123/EC. Additional indications on the application of Article 20(2) are included in the 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 ('the Services Directive')", SWD(2012)146, available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=SWD:2012:0146:FIN.

- whether in other sectors, including those not covered by Directive 2006/123/EC […], such as services in the field of transport and audiovisual services, any remaining unjustified restrictions based on nationality, place of residence or place of establishment should be eliminated

The Commission declaration also refers to the criteria to be followed in this assessment, e.g. the expectations of consumers and the likely impacts any extension of the scope of the Regulation would have on consumers and businesses, and on the sectors concerned, across the European Union.

The analysis that follows is part of the Commission's assessment of the experience of the first months of the implementation of the Regulation in its current form. In view of the short timeframe, the analysis can provide first insights in its implementation, as well as indications of possible synergies with other digital single market measures.

The second part of the analysis considers the possible effects of an extension of the scope of the Regulation, first with regard to electronically supplied services excluded from the scope of application of Article 4. It then further looks at other services outside the scope of the entire Regulation, *in primis* audiovisual services. The analysis is based on the specific indications provided by the co-legislators in the review clause as regards copyright. Moreover, the analysis also considers the existence of unjustified restrictions in the transport sector. Finally, it looks into other services not covered by the Regulation including financial, telecommunications, or health services, in order to analyse whether remaining unjustified restrictions based on nationality, place of residence or place of establishment should be addressed by any extension of the Regulation[19].

Finally, on both aspects, the timing of the review coincided with the COVID-19 crisis outbreak. The data and analysis undertaken therefore could not take into account any possible unexpected effects of the crisis, including those on the general macroeconomic

[19] The range of services excluded from the scope of the Regulation includes a variety of different activities of different nature. Some of the services excluded, however, may have a lower potential to be subjected to an EU horizontal regime on the basis of current characteristics of the Regulation, i.e. they are not provided under general terms and conditions (mass market/no individual negotiation), without a relevant B2C element (or at least purchase for end-use), with limited on-line and cross-border potential. Moreover, some of the excluded activities may not be fully open to competition and/or free cross-border provision, as they may be subject to extensive national regulation and/or national funding, they entail the exercise of public authority or legal monopolies are assigned, cross-border provision may be restricted and/or the margin of manoeuvre for the trader to set the terms and conditions is very limited if not existent. These cases need to be dealt with the general instruments (non-discrimination principle of Article 56, if a service is at stake, and/or 18 TFEU) or, where applicable, sector-specific rules, which may tackle also (and in particular) conditions imposed by Member States (the regulation only focusing on discriminatory requirements of traders).

framework as well as those specifically affecting the provision of specific services and/or goods online.

2. IMPLEMENTATION OF THE REGULATION

2.1. Implementation by Member States

While the Regulation defines directly applicable rights and obligations, it also aims to improve their enforcement. It does so by establishing explicit obligations on Member States to designate bodies for enforcement and assistance to consumers, as well as by establishing measures applicable to infringements. Member States should have put in place these measures and communicated them to the Commission by 3 December 2018.

In particular, Article 7 of the Regulation requires Member States to "*designate a body or bodies responsible for adequate and effective enforcement of this Regulation*" (paragraph 1), to "*lay down the rules setting out the measures applicable to infringements*", which "*shall be effective, proportionate and dissuasive*", and finally to "*ensure that they are implemented*" (paragraph 2).

Moreover, pursuant to Article 7(3), Member States shall communicate to the Commission the measures applicable to infringements of the provisions of the Regulation. Recital 35 also clarifies that "*Member States should designate one or more bodies to be responsible for taking effective action to ensure compliance with this Regulation. Those bodies, which could include courts or administrative authorities, should have the necessary powers to order the trader to comply with this Regulation. Member States should also ensure that effective, proportionate and dissuasive measures can be taken against traders in the event of any breach of this Regulation.*"

In addition to these basic enforcement requirements, the Regulation contains more specific obligations regarding practices affecting consumers. First, Article 8 of the Regulation requires the Member States to designate a body or bodies responsible for providing practical assistance to consumers in the case of a dispute with a trader. This is without prejudice to the possibility to provide assistance to other customers covered by the Regulation (i.e. undertakings acquiring goods or services in the pursuit of their business trade, but only for end-use).

In addition, the Regulation is covered by the Consumer Protection Cooperation (CPC) Regulations. Accordingly, the obligations stemming from the CPC Regulations are applicable to the competent authorities enforcing the Regulation. This includes

notification obligations as well as minimum substantive requirements and cooperation obligations[20].

Finally, Article 10(3) of the Regulation also amended the Annex to the Injunction Directive so as to include that Regulation within the scope of EU instruments covered by the Directive. Accordingly, Member States have to ensure that qualified entities can seek injunction measures for the protection of the collective interests of consumers aiming to stop or prevent traders' breaches of the Regulation for the protection of the collective interests of consumers[21].

2.1.1. Implementation process and role of the Commission

The Commission started early discussions with Member States in the context of the Expert Group on the Services Directive, the Consumer Protection Cooperation (CPC) network, and the European Consumer Centres (ECC) network in order to raise awareness and clarify issues on the implementation, ahead of the deadline provided by the Regulation. The Q&A document published in September 2018 included a specific section dealing with implementation by Member States, including issues that emerged in the context of bilateral and multilateral discussions with Member States, including at Council level. Next to this assistance prior to the date of application, the Commission additionally reminded Member States to take the appropriate measures ahead of the implementation deadline.

Despite these efforts, by December 2018 only six Member States had lived up to their obligations under the Regulation to adopt bodies designated for the enforcement of the

[20] Pursuant to Regulation (EC) 2004/2006, each Member State shall designate and communicate a competent authority responsible for the enforcement of the laws that protect consumers' interests, which shall have a minimum set of powers (such as investigative powers, injunction to order cessations, actions against failure to comply) and provide mutual assistance (exchange of information or adoption of enforcement measures) to other CPC authorities. Regulation (EU) 2017/2394 improved that framework as from 17 January 2020: by extending its scope, *inter alia*, to the general non-discrimination provisions of Article 20 of the Services Directive, hence completing the enforcement system of the Regulation as regards discriminatory practices still subject to a case-by-case assessment; by strengthening of the minimum powers of the competent authorities to cooperate in the cross-border context, and especially to tackle bad online practices faster (such as the power to carry out test purchases and mystery shopping, to suspend and take down websites, to impose interim measures, to impose penalties proportionate to the cross-border dimension of the imputed practice); by putting in place stronger coordinated mechanisms to investigate and tackle widespread infringements; by allowing authorities to accept commitments from traders to provide remedies to affected consumers in cases of widespread illegal commercial practices, by allowing external bodies such as consumer and trade associations (invited to do so by Member States) and European Consumer Centres to post alerts and signal issues to authorities and the Commission.

[21] Depending on the choice made by each MS the qualified entities may be in particular consumer organisations or public bodies. Injunctions may be sought in judicial or administrative procedures.

Regulation and notify the measures. Delays affected the adoption of the necessary legislative and administrative acts, and prompted close monitoring and scrutiny by Commission services.

Letters co-signed by the Director Generals from DG CONNECT and DG GROW were sent to the Member States in advance of the implementation deadline as well as after the deadline. These letters urged non-compliant Member State to complete the notification of measures. Further political letters were sent to raise political awareness and urge Member States to notify measures without delay. In parallel the Commission had on-going contacts at bilateral and multilateral level in the Expert Groups dedicated to cross-border service provision and consumer protection. These activities facilitated the compliance of most Member States by spring 2019. However, in July 2019, 8 months after the date for application, 6 Member States (CY, FR, PL, RO) still had not notified any, or only some measures (SK and ES), prompting the Commission to begin infringement procedures.

The Commission therefore adopted 6 Letters of Formal Notice against these Member States on 27 July 2019, asking them to notify the measures applicable and/or to provide substantiated evidence to prove that the notified measures fully implement the obligations in the Regulation. Following the launch of these infringement proceedings, SK, PL, RO and CY finally adopted specific measures, while ES provided additional elements related to the national legal framework confirming that the notified sanctioning powers in the context of consumer protection would be applicable to all hypotheses provided for in the Regulation. Furthermore, ES clarified that pending legislation would strengthen the ordinary civil law remedies in case of B2B transactions. At the point of adoption of this document, FR has not yet notified national measures applicable to infringements of the Regulation[22]. Thus, the Commission is closely monitoring the adoption process of the national legislation and further measures are being considered by the Commission.

The steps taken by the Commission to ensure compliance with the notification obligations are meant to ensure that customers can have access to effective, proportionate and dissuasive measures, which would end any infringement of the Regulation. The notified measures have been made available to the public on the Commission's website[23], in line with Article 7(3) of the Regulation, including the specific contact points for enforcement and assistance bodies appointed in each Member State. On the other hand, these infringement actions related to the notification of the

[22] At the same time, the competent authority has been notified in the CPC network, so that it can informally cooperate within the network with other enforcement authorities.
[23] https://ec.europa.eu/digital-single-market/en/geo-blocking-digital-single-market

measures do not exhaust the assessment and monitoring activities of the Commission, as the effectiveness of these enforcement and assistance tools is subject to on-going monitoring, in order to check whether they ensure adequate and effective enforcement of the Regulation "on the ground" as well as to verify compliance with the additional requirements laid down in the European consumer protection legislation applicable as from 2020.

2.1.2. National measures adopted and designated bodies

A general overview of the measures notified to the Commission, as well as contacts of enforcement and assistance bodies are available online and constantly updated on the Commission website[24]. The following paragraphs provide a more detailed overview of the implementation in the Member States.

Enforcement bodies

Administrative authorities are generally competent to apply the Regulation vis à vis consumers. In a large majority (23) of Member States[25] the consumer protection authorities are responsible for implementing the Regulation. In some Member States (such as in IT, PL) those authorities have parallel responsibility for competition law enforcement. In the remaining 4 Member States sectoral regulatory authorities have been appointed[26]. Accordingly, institutional arrangements and powers applicable to the enforcement of the Regulation are often the same or very similar to those applicable to infringement of consumer protection legislation.

In a large majority of Member States (BE, BG, CY, DE, DK,EE, EL, ES, FI, HR, HU, IE, IT, LU, LV, MT, PL, RO, SE, SI, SK) only one enforcement body has been appointed. In the remaining Member States (AT, CZ, LT, NL, PT), other authorities can be involved in enforcing the provisions, in particular with regard to supervision in some specific sectors and/or issues (such as with regard to breaches of obligations related to the use of payment means, for which authorities in the financial sectors are also empowered).

While general trends appear quite homogenous as regards enforcement in B2C transactions (widespread involvement of consumer protection authorities), two different enforcement systems emerge with regard to the application of the Regulation to B2B

[24] See footnote 23.
[25] AT, BE, BG, CZ, DK, EE, EL, ES, FI, HR, HU, IE, IT, LT, LU, LV, NL, PL, RO, SE, SI, SK.
[26] In DE the authority responsible for electricity, gas, telecommunications and post; in MT the authority responsible for telecommunications; in PT the authority responsible for health safety of products; in CY the Ministry of Energy, Commerce and Industry, Industry and Technology Service.

transactions, i.e. in those cases where the customer is an undertaking acting in the context of its trade/business, but only to make purchases of goods or services for its end-use, thus excluding purchases made for resale and processing.

Member States are split among those (AT, BE, CY, DE, DK, HR, HU, IT[27], MT, PL, PT, RO, SI, SK) where an administrative authority is designated for the enforcement of the Regulation in B2C and B2B relationships (usually the same authority)[28] and those remaining Member States (BG, CZ, EE, EL, ES, FI, IE, LT, LU, LV, NL, SE) that empowered administrative authorities only with the powers to deal with B2C relationships. In these latter cases, the enforcement of the Regulation in B2B transaction is left in principle to private litigation[29]. Some Member States, however, noted that B2B cases which also involve B2C may be subject to investigation by the consumer protection authority. Finally, while some Member States envisage specific measures for private litigation of B2B cases[30], other Member States leave this to ordinary civil court procedures.

The existence of different enforcement systems applicable for infringements affecting consumers on the one hand and (only) undertakings on the other hand is not prevented by the Regulation in view of the specific (and more stringent) enforcement requirements applicable vis à vis infringements against consumers. It also reflects differences in national approaches regarding the degree of protection for undertakings acting as customers, which is by and large not harmonised at EU level[31].

In order to comply with the basic requirements of the Regulation, however, any designated body, including courts or administrative authorities, should ensure adequate and effective enforcement of the Regulation. Further, the measures provided by the Member States applicable to infringements should be effective, proportionate and dissuasive. Recital 35 clarifies that Member States should provide the "*necessary power to order the trader to comply with this Regulation*". Within this context, the effectiveness of the overall system of remedies available in the case of infringement through civil litigation should be taken into account, including in particular the possibility to put the infringement to an end. In this regard, different legal traditions and available remedies may play a role. This includes judicial remedies to order an end to an

[27] Although in this case the public enforcement in pure B2B situations usually plays a secondary role.
[28] This adds to the possibility to also refer the cases to courts under ordinary civil remedies.
[29] This approach was already announced during the negotiations by some Member States, and is partially reflected in the wording of the Regulation.
[30] Like standing for representative trade associations in LU, explicit/specific injunction powers and sanctions imposed by courts for LU and CZ
[31] For example, in some Member States undertakings acting as end-users or SME are generally entitled to a broader protection akin to consumer protection rules.

infringement through – for instance – interim and/or final injunction orders, as well as the possible consequences in case of lack of compliance with court's orders, such as penalty payments and/or criminal sanctions. For instance, on the basis of the ordinary civil remedies potentially applicable to these claims[32], injunctions orders (interim and/or as final decision) appear available in a number of countries where only private enforcement is available for B2B transaction, such as CZ, DK, EL, LV, IE, ES, EE, SE, LT, BG[33] while fines or criminal law sanctions for lack of compliance with court's orders are explicitly mentioned, for instance for DK, EL, FI[34], LU, SE, IE, SI. Whether these different measures are effective, proportionate and dissuasive in practice, however, will still need to be verified on the ground, in view of the very limited implementation experience in the first months of application.

In a large majority of Member States the administrative authorities are authorised to impose fines in case of breaches of the Regulation, either directly (AT, BE, BG, CY, CZ; DE, EE, EL, ES, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT, RO, SE, SI, SK) or through referral to a court (DK, FI, LU, as well as IE in case of prosecution in alternative to fixed payment notice). Further, in a number of Member States the authorities rely on a "step-by-step" enforcement procedure. In those countries, the respective authority may, before imposing a sanction, rely on 'light touch' measures to achieve compliance such as issuing warnings (BE) or obtaining commitments from the trader (DK). In one Member States (DE) a "step-by step enforcement procedure" is planned to be adopted as part of the transposition of the European electronic communications code[35]. This would include asking the trader for comments, issuing a binding decision, and then imposing fines only upon a violation of this decision.

The range of fines applicable in different Member States can vary considerably. Moreover, Member States often provide for large variations between minimum and maximum applicable amount of the fines, allowing to take into account various elements[36]. For instance, the amount of a fine could depend on the size of the market and/or the specific features of the violation. Finally, in some Member States (DK and IE) criminal liability may be applicable for violations.

[32] Data from surveys from Member States in the context of the Expert Working Group on the Services Directive and general information available on e-justice portal.
[33] As well as IT, where private enforcement is in any case reported as the main enforcement remedy for B2B.
[34] Through conditional fines
[35] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.
[36] Including fines related to the turnover of the trader.

Overall, Member States can be divided into countries having their maximum fine established relative to turnover or with high maximum fines above 100,000€[37] and those with relatively smaller and/or narrower thresholds[38]. It remains to be seen whether and to what extent the large variation of fines available in different Member States and also within a Member State (for instance where a large margin of discretion is left to the enforcement body) ensures the effectiveness of measures applicable to infringements. At the same time, the large variety of infringements potentially at stake (from individual small off-line shops, to large multinational groups) may require the possibility to take into account different considerations on a case-by-case basis when setting appropriate fines. The range of alternative remedies, such as the publication of the enforcement measures, may also provide some dissuasive effect. Finally, given the widespread involvement of consumer protection authorities in the implementation of the Regulation, it remains to be seen to what extent changes to be adopted when transposing the new measures for better enforcement of consumer protection legislation of the "New Deal for Consumers" package will have indirect impacts on the enforcement systems for the Regulation. Overall, the implementation of the Regulation needs to be followed closely in the future, in order to verify effectiveness of the measures in practice.

Finally, because the Regulation has been included within the scope of the Injunction Directive, adaptation to the corresponding national framework has in some cases been necessary. Pursuant to the Directive, Member States need to ensure that qualified entities can seek injunction measures to stop or prevent breaches of the Regulation by traders. This is to ensure that the collective interests of consumers are protected[39]. Given the direct application of the Regulation in national legal orders, qualified entities designated in other Member States should have the possibility to bring actions for injunction in these cases. In a few instances this triggered changes of rules transposing the Injunction Directive or the specific empowerment of qualified entities[40]. In the majority of cases, however, the general rules on consumer injunctions are directly

[37] Such as CZ: 3 mio Czech Koruna = approx.. 111,000€; CY up to 5% turnover or 150,000€, ES: from 3005 to 601 000 €, HU up to 5% of turnover, IT: from 5000 to 5 mio €, LU: 251 to 120000€, MT: 350 000€, NL: 900 000€ or 1% of turnover, PL up to 10% of turnover, SE: 5000 to 5 mio SEK, i.e about 474,415€ and 10% of turnover

[38] Such as AT: up to 2900 €, BE from 26 to 10,000€, BG from 250€ to 5000€, EE: 1200/32 000 €, EL: 1000 to 10 000€, HR: from 1352 to 13500€, LV from 50 to 10,000€: LT from 144 to 1448€, PT from 250 to 25,000€, RO from 5,000 to 50,000 lei (approx.. 1,000 to 10,000€) SI from 500 to 20 000€; SK: from 100 to 50 000 €

[39] Depending on the choice made by each MS, the qualified entities may be in particular consumer organisations or public bodies. Injunctions may be sought in judicial or administrative procedures.

[40] HR, IT, LU.

applicable also to breaches of the Regulation without need of national legislative changes[41].

Finally, 26 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV LU, LV, MT, NL, PL, PT, SL, SK) have appointed European Consumer Centres (ECC), or contact points in close cooperation with the national ECC[42], as assistance bodies.

2.1.3. Experience of first months of application by national bodies

In view of the limited time passed after the date of application of the Regulation and from the largely delayed empowerment of responsible bodies in several Member States, it is not yet possible to form a clear assessment of the effectiveness of the enforcement systems on the ground. Having said that, no complaint from consumers has been received so far by the Commission, concerning any issues of appointed national authorities not pursuing infringements, or doing so too slowly. The previous analysis therefore focused on the formal powers provided to the enforcement authorities.

In order to gather a first feedback on the implementation of the Regulation by the competent national bodies, the Commission services have launched surveys of the relevant competent national authorities and bodies. This qualitative and more granular information adds to the more general statistics generated by the Consumer Protection Cooperation Network and the ECC Network, dealing with these issues.

European Consumer Centres (ECC) Network

Pursuant to Article 8 of the Regulation, consumers (i.e. natural persons acting for purposes which are outside their trade, business, craft or profession) are entitled to get practical assistance in case of a dispute with a trader arising from the application of the Regulation. This assistance includes, at least, providing information on the rules applicable, on the available remedies, as well as ensuring mutual assistance with other bodies in other Member States. Often these bodies support consumers in their preliminary contacts with the trader, with a view to achieve a common understanding, and an amicable solution of the dispute. These bodies are often the first contact for consumers and provide awareness about the rights in the Regulation, as well as its limits.

[41] On the basis of the information reported in Civic Consulting (2017) *Study for the Fitness Check of EU consumer and marketing law*, the large majority of Member States did not transpose the ID through a closed list, but either adopted an automatic cross-reference system or extended the possibility to launch injunction procedures to consumer protection legislation in general.

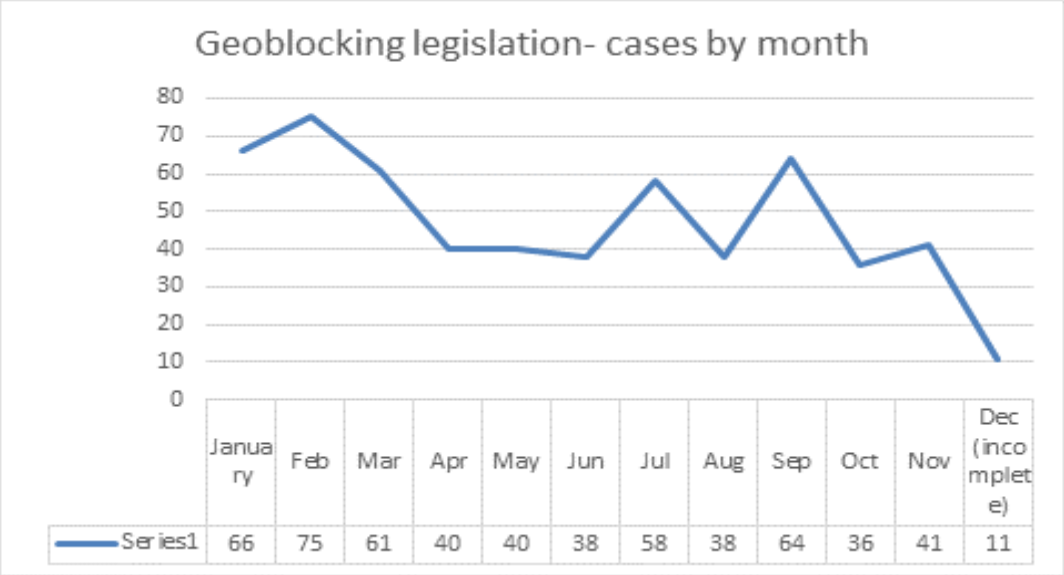
[42] Such as in PL, where the contact point for Alternative Disputes Resolution/Online Disputes Resolution procedure is a service provided by the consumer protection authority, also hosting the PL ECC.

Overall, in the initial period of application ECCs received 562 questions related to the Regulation[43], and 99 complaints. In approximately 40% of these real cases, an amicable solution with the trader was found.

The majority of complaints and questions come from Austrian and, to a lesser extent, Belgian centres, which together account for approximately 1/3 of overall issues. In general ECCs in medium sized countries (in addition to AT and BE, PL, DK, NL, IE, CZ) appear to be contacted more often in comparison to larger countries (FR ranks third, DE ranks 7th, IT 9th). Even more concentrated is the country of the traders concerned, which in almost 1/3 of cases is from Germany. Luxembourg features prominently, as the second trader's country concerned (when a specific country is identified).

With regard to the trend of cases referred to ECC up to December 2019, a peak appeared immediately after the date of application, with a resurgence during the summer months; otherwise an average of around 40 cases per month is reported.

Figure 1 - Geo-blocking legislation, ECC cases per month



In October 2019, the ECC network published a paper with general qualitative findings about the first months of application of the Regulation[44]. In the main conclusions of the paper, a mismatch between the expectations of consumers and the objectives and scope of the Regulation is identified. This would be due to a misunderstanding of consumers

[43] In general it may be noted that these represent a very small fraction of issues referred to ECCs generally. For instance, in 2019 they received overall approx. 17000 complaints and 114000 questions.
[44] https://www.ecc.fi/globalassets/ecc/ajankohtaista/raportit/2019-geoblocking-position-paper-en.pdf.

about the scope of application, in particular regarding the services excluded from the scope. Moreover, consumers seem to expect that access to offers should also trigger a right to get goods delivered in their Member State, even if subject to additional costs and, with regard to different national websites of the same trader, seamlessly across different versions. Even if the possibility to differentiate offers is explicitly provided for in the Regulation, yet the limitations of delivery options in different national websites of the same trader, including of larger retailers and/or marketplaces, may create frustration. Indeed, to the extent that innovative delivery services, receiving or picking up the goods in one country on behalf of consumers located in another, have not yet developed widely, the main impact of the "shopping-like-a-local" as regards actual access to the goods is materialising primarily in cross-border regions. In this regard, it is reported that traders do not always envisage the possibility to self-arrange the delivery, or – more problematic from the point of view of the Regulation – do not allow for self-organisation of the delivery by the consumer in their terms and conditions, and/or refuse to ship to professional forwarding services. Finally, in spite of rules laid down in the SEPA Regulation preventing discrimination of SEPA payments (credit transfer and direct debit) on the basis of the "nationality" of the bank account, some traders still refuse, as a general rule, such payments from "foreign" banks[45]. Overall, therefore, the ECC-net report shows that not all traders have still implemented the Regulation, but at the same time they report a more general tension between the expectations of consumers and the development of certain business practices, including by multinational traders, limiting the scope of delivery options provided for in different versions of their websites.

In September 2019, the Commission services also carried out a survey amongst the designated bodies. The aim of this survey was to gather their views on their first experience with the Regulation. The feedback from this exercise is the following, based on 16 ECCs who replied to the questionnaire[46].

[45] The European Court of Justice recently confirmed that a general obligation to have a residence in the Member State of the payee (i.e. the trader), would amount to a circumvention of Article 9 of the SEPA Regulation, if it is not justified and proportionate to the aim it serves (Case C-28/18). So, while companies continue to have a choice as to whether or not they will allow customers to use SEPA direct debits as a means of payment, if they do allow such payments, they cannot restrict this payment option to customers resident in a particular Member State as a general rule; in this regard, SEPA Regulation (Regulation No 260/2012) and the egulation complement each other, as clearly stated also in Article 5(1) of the latter, also preventing such restrictions as a general rule. Accordingly, the possibility to request alternative means of payment and/or security on the basis of Article 5(2) of the Regulation, is based on an assessment on a case by case basis about the existence of objective (additional) risk of default of payment in case of foreign payers, such that the application of Article 5(2) does not mean that traders are entitled to including as a rule the condition that a payer should have its residence in the payee's country.

[46] PT, NL, CY, CZ, HU, LU, EL, AT, BG, SE, DK, IT, LV, PL, MT, GR.

- Among these ECCs, the date of designation and possibility to process assistance requests lies between September 2018 and September 2019. However, only the ECC in DK, CY, HU, AT and LV were already designated in December 2018, when the Regulation became applicable. Seven more ECC's were designated as competent authority only after, during 2019[47].
- Most ECCs report that they are only empowered to provide assistance to consumers. In a few cases, however, the ECCs are also empowered to formally request enforcement actions in front of the competent national authority (CZ, HU, PL, IT, AT and LV).
- Overall a total number of 318 queries related to Geo-blocking issues have been filed with the ECCs that responded to this questionnaire.
- The number of queries seems to vary significantly between countries. The ECC in EL and LU did not receive any queries, while the ECC in Austria received a total of 157 queries. Between these two extremes, the majority of ECC's (8) received between 1 and 10 queries, four other ECC's received between 10 and 30 queries and one (PL, in addition to AT) more than 30. Most of these queries concern on-line services, with less than 10% related to services provided off-line.
- The overwhelming majority of the queries were from customers against on-line traders from the EU, Norway, Liechtenstein or Iceland. Just in a handful number of cases (AT, BG, IT) queries concerned third country traders.
- As regards grounds of geo-blocking queries, less than 5% of queries (13) concerned lack of access to the on-line interface of the trader or automatic rerouting. In this regard, it was also noted by one ECC that the number of queries concerning lack of access to on-line interface significantly decreased following the date of application of the Regulation. A similar ratio is reported with regard to queries reporting discrimination of payment means (16), for which an ECC also noted that traders usually adjusted their practice once contacted.
- Overall alleged discrimination pursuant to Article 4, and in particular in the sale of goods, appears the most common ground for complaint in all Member States concerned. At least 215 queries were received which related to discriminatory conditions under the situations covered by Article 4. Out of these, 176 were related to the sale of goods, 16 were related to electronically supplied services and 23 concerned services provided at a trader's premises. In this regard, it was noted by a few ECCs that the large majority of queries related to sale of goods refer to the lack of delivery options. In addition to these, a few number of cases were received that were not covered by the grounds in the geo-blocking

[47] To be more specific, the ECC in SE was designated in April, the ECC's in IT and MT were designated in May, the ECC's in PT, CZ and LU were designated in June and the ECC in PL was designated in September. Finally, the ECC's in NL, GR and BG did not provide an answer to this question.

Regulation, in particular, related to financial services (4) and copyright protected services (6), which were either dismissed or treated under article 20 SD, as some ECC indeed also act as assistance bodies under Article 20 SD, and provided assistance in this regard in 7 cases.

- The most common follow-up to the queries by ECCs is the provision of information to the consumer, which helps clarify the extent and boundaries of obligations and rights conferred by the Regulation. In 226 out of the total of 318 queries, information was provided to the consumers and no further action was required. A total of 71 queries have been shared by ECC's within the ECC-Net, in order to involve or refer assistance bodies in other countries. An amicable solution was found for 30 of those queries. Finally, 16 queries were referred to other bodies.
- The majority of ECC's reported that the inquiries were in large part related to e-commerce, and within this clothes/shoes/accessories and electronics retail sectors featured most prominently. Many of the ECC's also reported that inquiries concerning services mostly related to online services such as transport and tourism.

As regards most recent data on the queries to ECC network in the first (Q1) and second (Q2) quarters of 2020, the number of consumers contacting ECC about geo-blocking fell in Q1 and Q2 of 2020 compared to the same period in 2019, (from 287 to 184). However, the proportion of geo-blocking queries that resulted in ECC contacting the trader increased slightly in 2020 (1.2% of geo-blocking queries resulted in trader interventions in Q1 and Q2 of 2019, while 1.5% of geo-blocking queries resulted in trader interventions in Q1 and Q2 2020). The outcome of trader interventions concerning geo-blocking was marginally better in Q1 and Q2 of 2020 compared with the same period the previous year with a small increase in the percentage of amicable resolutions (from 59% to 61%).

Consumer Protection Cooperation (CPC) network

The involvement of enforcement authorities may be triggered by consumer complaints directly filed to the competent authorities as well as a follow-up to earlier (unsuccessful) attempt to settle the issues with the trader (including through assistance of ECC). Furthermore, own initiative investigations are also possible in several Member States. Finally, given that the Regulation only applies to cross-border situations (Article 2), most infringement are almost certainly "intra-EU infringements"[48] under the CPC

[48] I.e. an act or omission that harms, or is likely to harm, the collective interests of consumers residing in a Member State or Member States other than the Member State where the act or omission originated or took place; or where the responsible seller or supplier is established; or where evidence or assets pertaining to the act or omission are to be found

regulation and may thus trigger cooperation within the CPC network through the notified competent authorities.

As of today, all Member States have notified a competent authority within the CPC network[49].

According to the old CPC Regulation still applicable in 2019 (Regulation (EC) No 2006/2004), different forms of cooperation among competent authorities were possible within the network of national authorities with regard to individual cases. First, pursuant to Article 6, a national authority can request information from other authorities in order to establish whether an intra-Community infringement has occurred. Similarly, a national authority can alert another authority about the suspicion of a possible intra-EU infringement, providing all the necessary information (Article 7). Moreover, in accordance with Article 8, any national authority can request other authorities in the networks to take necessary enforcement measures to bring about the cessation or prohibition of the intra-Community infringement without delays. Finally, in the event of a possible intra-EU infringement involving the interest of consumers in more than two Member States, a coordinated action can be arranged pursuant to Article 9.

During the first year of application of the Regulation, the number of requests based on the Regulation has represented slightly less than 10% of overall requests for information channelled through the CPC network (4 out of 48), while in 8 cases out of 197, a request to take enforcement actions has been introduced pursuant to the Regulation (approx. 4% of overall requests). However, no alert or coordination requests were launched. The activity within the network therefore is still relatively low, but these numbers should be assessed against the fact that the CPC network handles requests for some 22 different EU instruments and that by spring 2019 a majority of Member States had not yet designated the competent authority in the network. More general interpretative issues, not specifically related to a single case and/or procedure, are also discussed within the network through collaborative tools and in the regular meetings of the national authorities and with the Commission services.

[49] The notification within the CPC network as such does not necessarily imply that the authority at stake has been already empowered to adopt measures according to applicable legislation, but it allows that cooperation and enforcement requests may be channelled towards a contact point in the Member State. In this regard it can be noted that the necessary rules for the empowerment of the competent authority in France has not yet been adopted (see above). However, pending the adoption of the draft law on various provisions for adaptation to EU economic and financial law ("PJL DDADUE") implementing the Regulation in France, the DGCCRF has already informally started to monitor the implementation of the Regulation and has been notified in the CPC network. In this way it has dealt with two requests within the network and the territorially competent investigation services have been seized, reaching to put an end to the practice in an amicable manner.

In addition to the general figures on the requests for cooperation within the network, the Commission services also carried out a survey among the designated authorities in September 2019, with a view towards gathering their views on the first experience with the application of the Regulation, even when it did not lead to the launch of specific cooperation or alert requests within the network. The main highlights from this survey are the following, based on 13 CPCs that responded to the questionnaire.[50]

- With regard to the powers of competent authorities, most of them responded that they are not empowered to investigate and sanction infringements in B2B transactions. The majority, however, reported that they are also empowered to investigate and sanction violations of Article 20 of the Services Directive and only a few (DE, NL, MT) do not have this additional power.
- Regarding the date of designation as a competent authority within the CPC network, the situation varies across Member States. The date of designation as a CPC authority is between December 2018 and July 2019, with one authority (SK) responding that it will have been designated in November 2019. The authorities from DK, DE, NL, BE and EE all started to accept and process complaints in December 2018, when the Regulation became applicable. The authority in LT followed in January 2019, MT followed in May 2019 and CZ followed in July 2019. With regard to enforcement actions, the dates from which they were empowered to launch enforcement proceedings is between December 2018 and November 2019, and only a few (DK, DE, EE, and EL) already had some powers to adopt measures at the application start date in December 2018.
- A total of 145 complaints related to Geo-blocking issues were filed with the competent authorities; the number of complaints varying significantly between different Member States. The authority in DE received the most complaints (75), followed by IE (30), NL (11) and DK (10). The authorities in BE, LT, EE and SE received between 0 and 10 complaints. No complaints were received in CZ, RO and SK. The majority of these complaints were from domestic customers (110), while the number of complaints from foreign customers was significantly lower (37).
- The majority of complaints are against cross-border European providers (89), followed by complaints against domestic providers (48). Finally, only the DE authority received complaints (4) against third country providers. All reported complaints concerned on-line providers (137) but one reported by the DK authority.

[50] RO, SK, DK, DE, NL, BE, LT, EE, SE, CZ, GR, MT, IE.

- As regards the grounds of geo-blocking complaints, overall, more than 1/3 (53) of complaints received was considered not covered by the Regulation. The majority of these complaints were related to refusal to deliver outside the area served by the trader (36), with a considerably smaller number of complaints related to copyright protected services (8) or complaints treated under Article 20 SD (1).
- Denied access to on-line interfaces/automated rerouting to other websites pursuant to article 3 (40) and alleged discrimination pursuant to article 4 (42) were the most common grounds for complaints in most Member States concerned. Out of the 42 complaints related to discriminatory conditions under the situations covered by Article 4, 32 complaints were related to the sale of goods, 8 complaints were related to electronically supplied services and 2 complaints concerned services provided at a trader's premises. A minority of complaints were received regarding discrimination of payment means (12). In a few cases, DE and IE authorities reported that the reasons for the practice could actually be allowed pursuant to the Regulation in view of the explanations from the traders.
- As far as investigation and enforcement activities are concerned, following the start of an investigation a total of 55 cases were closed. Most of them were closed because they were not covered by the current Regulation (39), but several were closed due to the trader's compliance after the start of an investigation (12). On 3 September 2019, when the questionnaire was circulated, 28 enforcement proceedings were still open. As of October 2019, no enforcement measures have yet been adopted against traders, neither have any sanctions been imposed.
- Cross-border cooperation between authorities is still relatively modest, with only 10 cooperation requests reported. DE (3) was the only authority that received information requests and only the authorities in DE (4), LT (1) and SE (2) received enforcement requests[51]. To date, no alerts have yet been reported. Of these cooperation requests, 6 were related to a refusal of access/automated rerouting to other sites pursuant to Article 3, 1 was related to discriminatory conditions under the situations covered by Article 4, more specifically goods, and 1 was related to discrimination of payment means pursuant to Article 5. The cooperation requests were, for a large part, related to e-commerce, clothing, telecommunications, digital services and recreational services.

[51] Two additional (informal) cooperation requests also involved FR, although the authority is not yet empowered.

- Some authorities elaborated further on experiences that were relevant for the evaluation on the implementation and enforcement of the Regulation. One noted that it sometimes struggles to decide whether a situation constitutes unauthorised geo-blocking or not. Another noted that no detailed assessment of investigations has been initiated regarding the Regulation yet, since many of the issues raised either relate to foreign companies or are not in breach of the Regulation. Finally, another competent authority provided a more detailed qualitative feedback concerning the current scope of the Regulation, pointing out that, in general, consumers expect the right to cross-border delivery, although this is not provided by the Regulation; ensuring transparency of delivery areas is important to avoid disappointing consumers; and this detailed feedback also mentioned the possibility that some payment instruments providers (including credit card providers) could offer differentiated services to traders, with additional charges in case of credit-worthiness checks extending to other EU countries. When consumers use these cross-border payment means, they may have to enter into additional contractual arrangements with the payment service provider, incurring possible cost differences.

The new Consumer Protection Cooperation (CPC) Regulation 2017/2394, which is applicable from 17 January 2020, further strengthens the cooperation between national consumer enforcement authorities to ensure more rapid and consistent enforcement of EU consumer rules, especially in the digital environment. The new Regulation provides for new procedures, and for reinforced mutual assistance and alerts mechanisms, to tackle infringements that affect several Member States – i.e. coordinated investigation and enforcement mechanisms for widespread infringements and widespread infringements with a Union dimension. The latter concerns infringements that affect at least 2/3 of Member States, accounting together for 2/3 of the Union's population. In such cases, the Commission's role is strengthened as it can activate the network and ask authorities to take at least preliminary investigation measures. The Commission also coordinates such actions to ensure a uniform response to infringements with a Union dimension. This cooperation mechanism is supported by a modern IT tool facilitating the exchanges between Member States. Since January 2020 CPC authorities have sent three enforcement requests concerning the Geo-blocking Regulation and also an alert was issued. These numbers are higher compared to the enforcement requests under the old CPC Regulation.

2.1.4. Sweeps

In the context of the CPC network, regular coordinated and EU-wide screening of websites (known as "sweeps") are carried out by the national authority, to check whether a given sector is complying with consumer rules. The 2019 Sweep focused on

the issues faced by consumers regarding delivery of goods purchased online. Under EU law, every consumer has the right to receive clear, correct and comprehensible key information from a trader about goods before making an online purchase. The Sweep aimed at exploring whether clear information is provided by the trader. It also included some questions concerning compliance with the Regulation, in particular as regards access to websites and on conditions applicable to cross-border consumers when selling goods and delivering it in a country where the trader already offers delivery.

In total, 481 e-shop websites were screened by the EU/EEA competent authorities. The vast majority of the websites screened were EU/EEA websites. The scope of the sweep was limited to 3 categories of products (clothing and/or footwear, furnishings and household items, electric appliances).

Within this context, the sweepers checked 204 websites for compliance with the Regulation. In 28 cases, access was blocked, in 3 cases access was limited, and in 14 cases consumers were redirected, without having been asked for their explicit consent.

Regarding the possibility of foreign consumers to purchase goods and pick up or get them delivered to a Member State where the trader already offers delivery under the same conditions applied to local customers, the authorities found 58 cases which do not appear to be in line with the shop-like-a-local principle enshrined in the Regulation.

These cases have therefore been flagged for further investigation by the authorities (amounting to approx. 1/5 of all websites flagged for further investigation due to compliance issues with consumer protection rules).

2.2. Application by traders

The Regulation imposes non-discrimination obligations on "traders", defined in the Regulation as "*any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in the name or on behalf of the trader, for purposes relating to the trade, business, craft or profession of the trader*" (Article 2(18)). The Regulation applies to all traders offering their goods or services to consumers in the EU, regardless of whether they are established in the EU or in a non-EU country. Therefore, traders established in non-EU countries that operate in the EU are subject to the Regulation as well. The rules of the Regulation apply in principle to both business-to-consumer (B2C) and to business-to-business (B2B) transactions, to the extent that the latter take place on the basis of general conditions of access (i.e. they are not individually negotiated) and the

transaction is for the sole purpose of end use (i.e. made without the intention to re-sell, transform, process, rent or subcontract).

As to the particular obligations of traders under the Regulation, Article 3 bans the blocking of access to the traders' websites and re-routing without the customer's prior consent, Article 4 prohibits different conditions of access to goods or services offered by traders on the basis of nationality, place of residence and place of establishment of the customer, while Article 5, at the payment stage, provides for non-discrimination for reasons related to payments, and thus covers situations where differential treatment applied by traders is a result of the customer's nationality, place of residence or place of establishment, the location of the payment account, the place of establishment of the payment services provider or the place of issue of the payment instrument.

In 2015, before submitting the proposal for the regulation, the Commission carried out an EU-wide Mystery Shopping Survey of various traders, which analysed approximately 10,500 websites in the EU and modelled typical cross-border shopping situations[52]. The 2015 survey examined the various types of geo-blocking practices consumers face at each stage of the online shopping process and their prevalence by region, country, sector, product, and type of retailer. The websites were visited, first by mystery shoppers as domestic users, and subsequently as cross-border users from another Member State. This survey found that, overall, geo-blocking practices or limitations to cross-border delivery were identified in approximately 63% of all websites assessed. It found that only 37% of websites actually allowed cross-border EU visitors to reach the stage of successfully entering payment card details, i.e. the final step before completing the purchase.

Following the adoption of the Regulation, for the purposes of feeding into the assessment of first months of implementation of the current Regulation, the Commission launched another Mystery Shopping Survey during the last quarter of 2019 (carried out by a consortium led by *Ipsos*), aimed at collecting a representative dataset on the remaining incidence and characteristics of obstacles to cross-border on-line trade for goods and services in the EU following adoption of the Regulation. The survey covered a large sample of 9000 websites.

The following aspects of the scope and methodology of the 2019 Survey should be noted:

- The survey covered several sectors falling under the scope of the Regulation but also looked into potential geo-blocking practices in the

[52] https://ec.europa.eu/info/sites/info/files/geoblocking-final-report_en.pdf.

transport services field (passenger air, rail, bus/coach and maritime) currently excluded from the scope of the Regulation (on the results as to the former, see Section 3.2.2 below). Note that the 2019 Survey did not look at on-line games and software sectors which were covered by a different exercise (the mystery shopping exercise carried out in the context of the VVA et al (2020) Study).

- The survey looked into **geo-blocking practices** within each shopping stage – access, registration, payment, reflecting potential problematic issues of geo-blocking practices (such as blocking of access or automatic re-routing, non-acceptance of the foreign payment means though within the range of the means accepted by the trader). Moreover, the survey (as in 2015) also looked at other **limitations to cross-border offers** applied by traders, in particular, regarding delivery (see under point 2.2.4 below).
- The survey also covered a small sample of **third country websites** by traders established in non-EU countries that operate in the EU.

The methodology of the survey was designed to ensure **comparability with the geo-blocking situation in 2015** as reflected in the 2015 Mystery Shopping Survey[53].

Finally, in the context of possible limitations applied by the traders to cross-border access, the survey also looked into the business **practices of "multinational" traders** operating various national versions of the websites (accessed by mystery shoppers from the one and same Member State), and gathered data on any differences (not the geo-blocking practices *in stricto sensu* under the Regulation) between those different national websites of the same trader, like different prices or product availability or delivery zones. This enabled a snapshot of trends by the "multinational" traders in different national markets. The results on the **"multinational" analysis** are reported separately to the main results based on the traditional analysis, i.e. where a website from one country was visited from two locations (in country and cross-border).

The key findings of the 2019 Mystery Shopping Survey as regards geo-blocking practices and limitations are presented below.

2.2.1. Geo-blocking related to website access

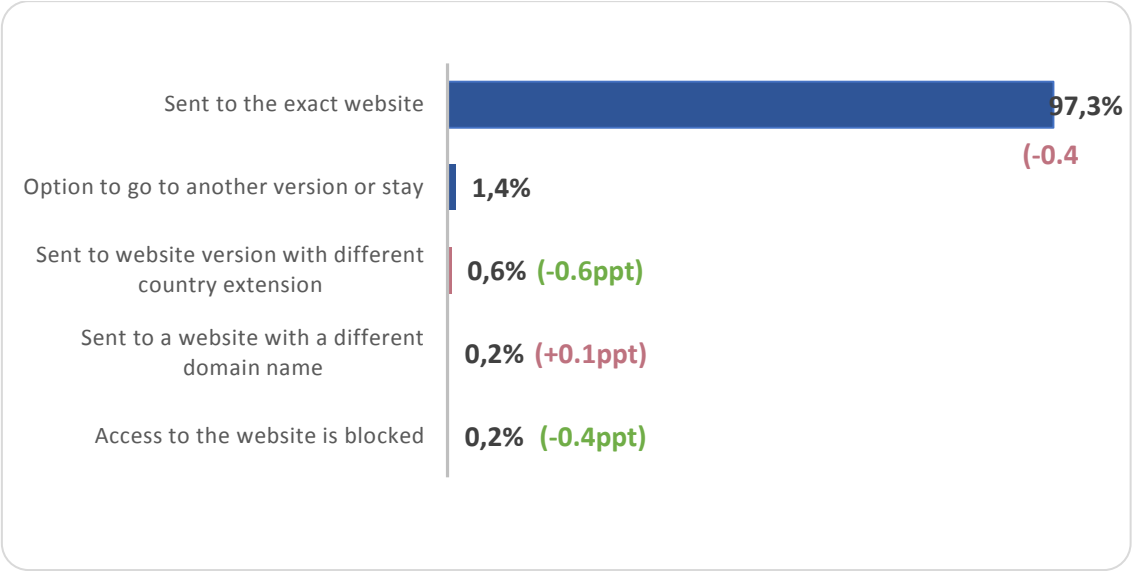
[53] This included the adoption of a similar methodology to identify the country pairs and gather the data as in 2015, although not full overlap of the website sample, that needed to be adjusted to take into account changes happening overtime. The exercise could not look into the overall differences of catalogues, items and conditions applied, although it did check random examples that may provide some indications. Comparison of trends was not possible for national versions of multi-territorial websites, for transport websites other than those offering airline services, or for third-country trader websites, which were not part of the 2015 exercise.

In the 2019 Mystery Shopping Survey, "access" to a website in the strict sense was considered granted if a) the exact website immediately opens, or b) if the customer is given the option to either go to another version or stay on the requested one.

The 2019 survey results reveal that, like in 2015, only very rarely did shoppers fail to access the exact website they wanted (without taking into account the website's language). The percentage of cases where access was denied declined to **1.3%** (EU 28 data) from an already relatively small figure of 2.1% in 2015. **Thus, for 98.7% of the evaluated websites in the EU28, the exact website that was sought access to could be accessed by cross-border shoppers.**

Outright blocking of cross-border visitors is no longer an issue, and dropped from 0.6% to 0.2% in 2019.

Figure 2 - Website access restrictions (EU28)

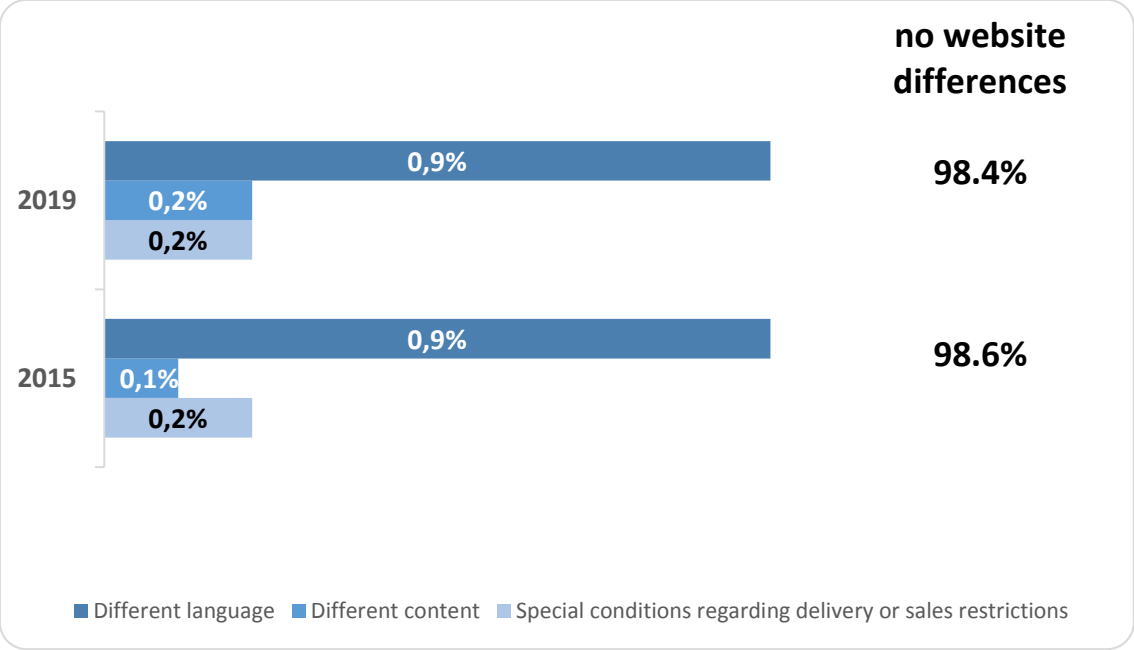


Source: Ipsos et al (2020)

Even if traders allow cross-border shoppers to visit their website, they can still restrict access by adjusting the content of their website depending on the shopper's location. While changes in the formal aspect of the website do not necessarily affect its content (and vice versa), it nevertheless can provide a first indication on whether such changes may take place. Therefore, in the 2019 Survey the shoppers were requested to indicate first sight differences with the outline of the website. The survey found this to be an uncommon practice as well. Overall, for 98.4% of the websites that could be accessed, the website appeared to be exactly the same, including the same default language as

offered to domestic shoppers. This is almost identical (-0.2ppt) to the result in 2015. The difference could be attributed to the increase in websites where the content appeared different for cross-border shoppers than to domestic shoppers (from 0.1% to 0.2%).[54] The practice of offering a different default language to cross-border shoppers, on the other hand, remained at the same level compared to 2015 (0.9%).

Figure 3. Website differences (EU28)[55]



Source: Ipsos et al (2020)

The survey also shows that changes are more likely happening in the case of large retailers: an absence of website language or content differences is indeed less common among **large retailers** (97.2%) compared to medium-sized (98.1%) and small (99.6%) retailers.

When it comes to access to a specific part of the website, overall, across all sectors surveyed, it remains rare that cross-border shoppers are not able to find the **same products** as domestic shoppers. However, in the 2019 Mystery Shopping Survey, geo-

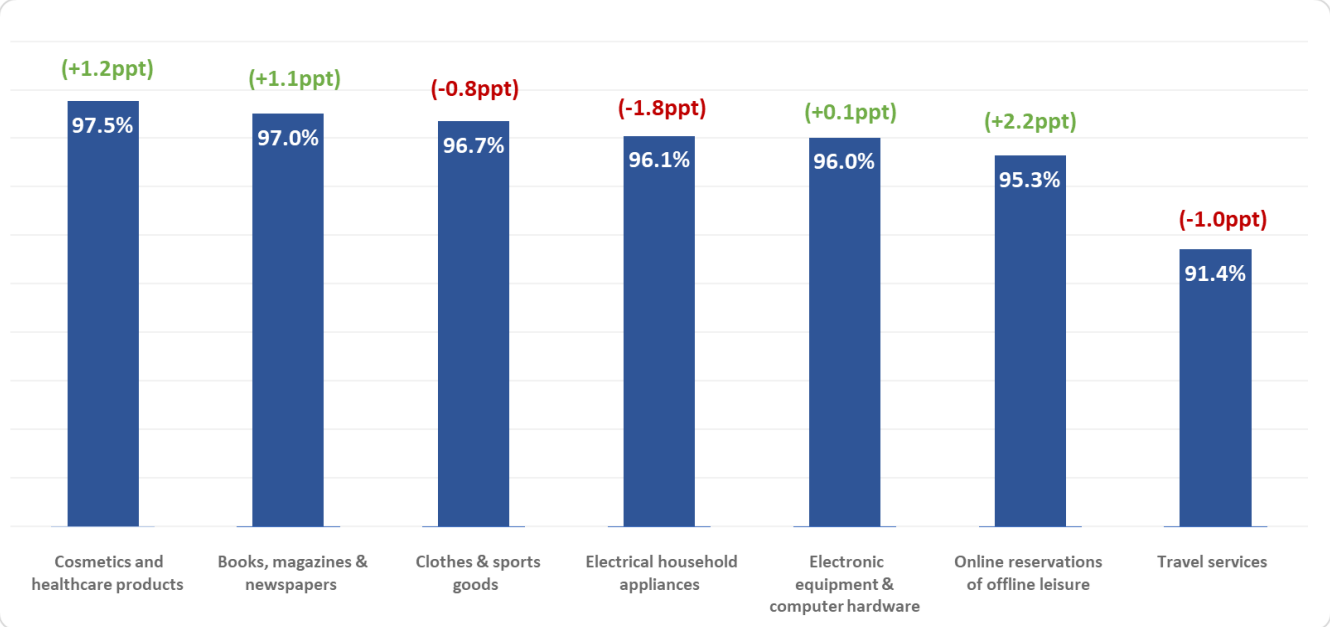
[54] Specifically, it was assessed whether, when opening the website for the first time from a cross-border location, "the content appears different". Such differences could include for instance a different introduction page, specific sales promotions, different products highlighted, etc. Since this practice was evaluated on the home page of the website only, any reported content differences do not mean that the website offers different or less products/services to cross-border shoppers. Availability of products/services was evaluated separately in the Survey.

[55] Website differences that were categorized as "other" (i.e., not related to content or language) are not shown in the figures in this section. As a consequence, percentages in the figures can sum to slightly less than 100%.

blocking in relation to product availability (specifically the ability to find the product with the exact same properties during a cross-border visit compared to a domestic visit; a variant of the product, such as a different colour, size or an older model was not allowed) decreased slightly from 2015 to 2019, by 0,1pp and is rather minor issue - only in **4,1%** of cases the shoppers could not find exact same product in 2019). This may suggest that some access obstacles may still affect some parts of the websites and/or presentation of products.

Looking at **sectors**, the travel services sector remains the sector where restrictions in service availability to cross-border shoppers are the highest. Exact service availability is seen in 91.4% of the travel service websites, a further decrease of 1.0ppts.

Figure 4 - Website offering the same goods/services to cross-border shoppers (sectors)



Source: Ipsos et al (2020)

When it comes to **price differences**, the survey reports a slight decrease of automatic changes of prices displayed to cross-border customers (27.2% of websites in the EU28 price their products differently for domestic and cross-border shoppers, a decrease of

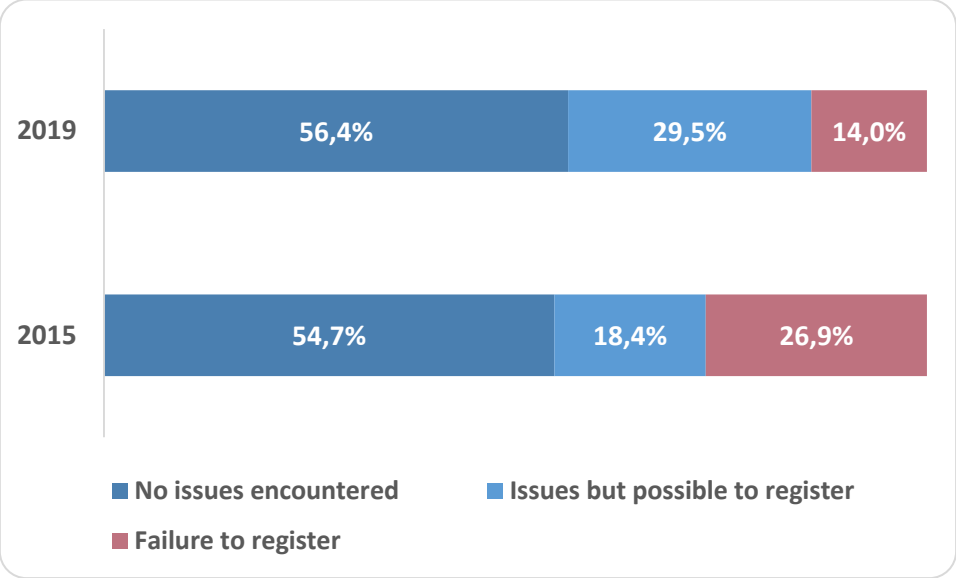
2.3ppts compared to 2015, -2.2 if referred to EU27 only), although with large variations depending on the localisation of the website[56].

2.2.2. Geo-blocking linked to registration

The 2019 Mystery Shopping Survey reveals positive developments as there is a clear decline in Geo-blocking linked to registration compared to 2015 (halved to **14,0**% from 26,9% in 2015), even though registration is the stage in the shopping process where Geo-blocking is most common in 2019 as well.

This indicates that while in the large majority of cases it is possible for cross-border shoppers to access the given website and find the product they are looking for, a failure to register can still prevent them from actually purchasing the product/service.

Figure 5 - Failure to register (the registration failures do not account for those cases only due to email addresses)



Source: Ipsos et al (2020)

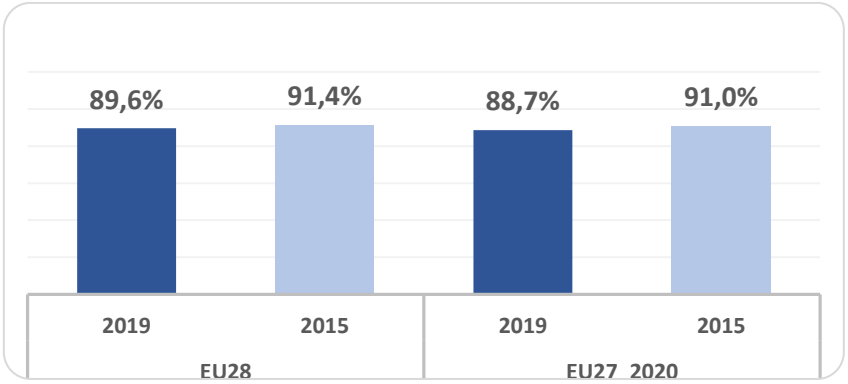
[56] For example automatic change of prices is more common for websites from non-Eurozone countries. It should be noted that (final) price differences linked to location do not necessarily reflect discriminatory practices as regards net prices, as they could also reflect changes in applicable VAT rates and/or other difference (such as cross-border delivery or change of accepted currency) triggered by the location of the customer (used as a proxy of the delivery). The comparison with 2015 data however can give a proxy of the reduction of practices automatically adapting prices also for other reasons.

2.2.3. Geo-blocking linked to payment

The 2019 Mystery Shopping Survey further reveals that there may still be issues with geo-blocking practices at the payment stage. The survey looked at cases where entering payment details of a foreign issued card was not possible even if international payment methods (such as credit cards of international circuits like Visa and Mastercard) were accepted as well as cases where it was explicitly mentioned that foreign credit cards or foreign direct debit, were not accepted[57]. It should be noted that refusal of foreign direct debits is a breach of Regulation (EU) N°260/2012 (SEPA Regulation) and each such case must be addressed by the designated national competent authority.

Furthermore, in this case, the fraction of unsuccessful attempts has remained stable, at **10.4%** of the evaluated websites, actually slightly increasing, compared to 2015. These findings may also be connected to some delays in the implementation of Strong Customer Authentication requirements by certain payment service providers[58], as well as some practices reported in enforcement cases where geographical limitations of ancillary services provided for by payment services providers would apply, hence processing of certain cross-border payments would require modification of the current agreements with the payment service providers.

Figure 6 - Absence of payment restrictions



Source: Ipsos et al (2020)

[57] This of course does not cover all possible issues at the payment stage, but only a subset. Refusal happening after the submission of the payment or with regard to IBAN details could not be reported within the methodology of the 2015 and, consequently, 2019 exercise.

[58] During the first year of application of the Regulation more specific rules laid down on the delegated act supplementing the PSD2 became applicable as from 14 September 2019 (Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication). Some payment service providers (in particular credit card providers) are still in the process of migrating towards SCAs under the supervision of the competent authorities, following the Opinion released by EBA on 16 October 2019.

2.2.4. Other limitations to cross-border sales

In the context of the activities related to the review, the Commission services have also looked more broadly at developments of access to cross-border offers, including an analysis of limitations to cross-border access not directly tackled by the Regulation, in particular with regard to the scope of delivery options provided by traders. This is often reported as a key issue and expectation of consumers in the context of the enforcement. It was therefore subject to specific screening in the context of the abovementioned 2019 Mystery Shopping Survey that looked into the scope of delivery limitations applied by traders. The survey also carried out a specific evaluation of multi-national traders' websites, looking into limitations (in particular as regards delivery) affecting each national website version.

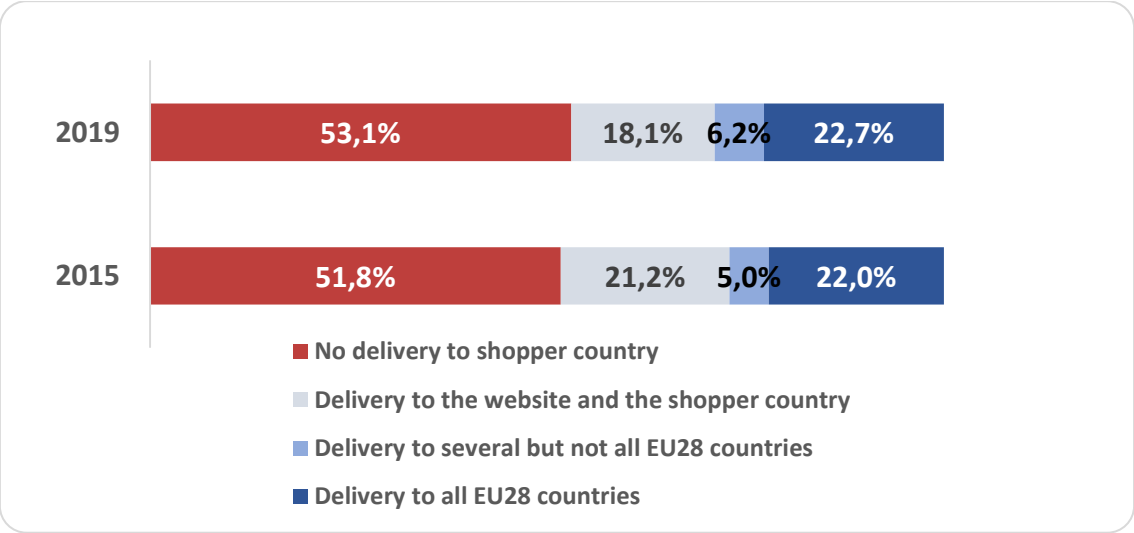
2.2.4.1. Delivery limitations

The Regulation does not in itself impose any obligation on traders to deliver goods across borders. The choice of whether to offer customers cross-border delivery in some or all Member States remains, in principle, a free marketing choice of the trader. However, this should be clearly spelled out in the terms and conditions applicable to the purchase at hand. Against this backdrop, the 2019 Survey looked into the scope of delivery options provided by traders, to assess to what extent this may still represent a limitation to cross-border access for consumers. The 2019 Survey assessed each evaluated website from the perspective of the shopper and their location, as to whether delivery to the shopper's home country is possible or not. If delivery is possible, it was additionally assessed whether delivery was offered to all EU countries, or to a subgroup of EU countries, or only to the website's country and the shopper's country. Data on the delivery limitations applied by the multinational traders on different national websites are presented separately below, under point 2.2.4.2.

Delivery limitations remain an important reason as to why cross-border shoppers are unable to order a product/service with an online trader of their choice in another country. Contrary to actual geo-blocking practices, which, as shown above, generally decreased since 2015, limitations in delivery options (i.e. whether a website delivers to the shopper's country) increased slightly between 2015 and 2019, from 51.8% to **53.1%**[59]. On the other hand, the share of websites that offered delivery to all EU 28 countries increased slightly by 0.7 pp to **22.7%** in 2019.

[59] The percentage of 'no delivery to shopper country' includes all evaluations where either a delivery address was not accepted in the registration phase, or a restriction of delivery became clear after the registration phase. A rejection of a delivery address in the registration phase was always assumed to reflect impossibility to deliver to the shopper, regardless of whether the actual registration failed or not.

Figure 7 - Delivery restrictions (EU28)



Source: Ipsos et al (2020)

2.2.4.2. "Multi-national" traders

The 2019 Mystery Shopping Survey also looked separately into EU multi-national traders' websites, i.e. different national websites operated by the same multi-national trader targeting different markets (i.e. through websites with different country extensions, languages, layouts, etc…)[60]. This allowed comparing the results/differences

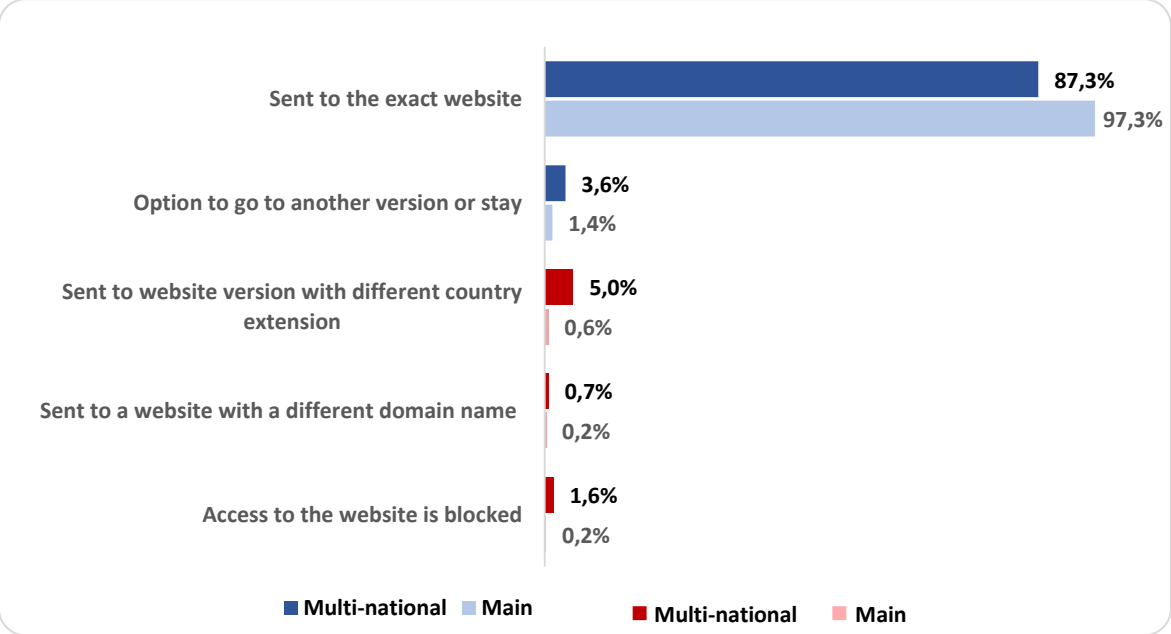
[60] In addition to the EU multi-national traders reported in this section, the 2019 Survey also included a small sample of the **third country traders** websites (10 websites from 2 third country traders), i.e. the traders having no legal entity within the EU but still found to offer their services/goods in the Union (e.g., by offering a website in a European language or providing prices in EUR and offering delivery to one or more EU countries), and thus subject to the obligations under the Regulation. The small sample did not allow to provide quantitative conclusions nor comparison with 2015 (as third country websites where not included in 2015 survey), but it allowed to make some qualitative observations on the geo-blocking practises in this sample of the traders. The research did not reveal that geo-blocking in these websites would be more common that among EU traders. In cases when the third country traders operate in the EU via multiple websites with an EU Member State extension (as opposed to cases where the third country website operates non EU-website), there seems to be some similarities with the conduct of the EU "multi-national" traders, notably as far as delivery options are concerned: EU websites of the third country trader applied restrictions on the delivery and offered delivery only to the website's country or possibly some neighbouring countries. As concerns registration on the website, the research reports that one of the observed traders with multiple EU sites required an address during registration, but only allowed registration with a billing address from the website's country and a few neighbouring countries. This indicates that these websites are designed to specifically serve a set of national markets, and only these markets, rather than the whole of the EU.

of domestic visit to one national website to a cross-border visit from the same country to another national website of the same trader.

The results on multi-national traders have to be looked at against the background that the Regulation does not affect the right of traders to freely design their prices and different national websites across the EU and carry out their marketing activities. In the situations covered, the Regulation essentially obliges traders to treat EU customers in the same way when they are in the same situation (i.e. where they are willing to accept the general conditions of access, including delivery options, provided for on a given website or point of sale), regardless of their nationality, place of residence or place of establishment.

As regards access to a different national version of the website of a multi-national trader (other than that of the shopper's location), the 2019 Survey shows that **87.3%** of shoppers were able to access that target website. This figure is substantially lower than the 97.3% success rate in accessing the same website from a different country observed for the main sample. The most likely reason for not being able to access the target website was redirection to the same subdomain with a different country code top-level domain (5%).

Figure 7 - Website access (multinational traders)



Source: Ipsos et al (2020)

As regards **differences of national website versions** of the multi-national trader, these cannot be viewed as geo-blocking practices *in stricto sensu* or limitations to cross-border shoppers applied by these e-commerce traders; these differences (like different language or different offers on the website) may be valid and aimed at helping domestic customers. On the other hand, in practice, the absolute impossibility to get access to certain offers provided in different national version of websites of multinational traders already active in the domestic market may frustrate customers' expectations about the internal market.

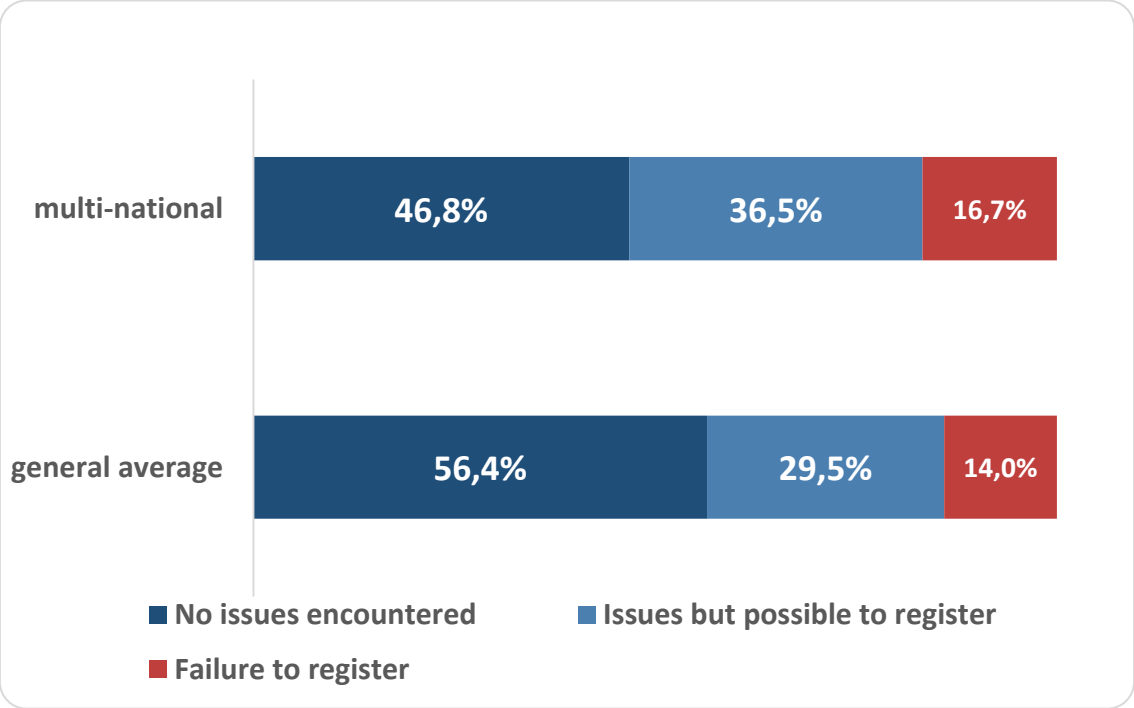
As regards **product availability**, shoppers were able to find the exact same version of a given product in less than two thirds of the cases (58.2%), while this was true for the great majority of cases in the general sample (95.9%). These differences are not surprising, but also not directly comparable, given that in the general analysis shoppers accessed the exact same website from a domestic and a cross-border perspective, while here two different websites were compared. Unsurprisingly multi-national traders are likely to vary their active offering and catalogues in different countries, likely based on variability in demand in the national markets they target.

With regard to **registration** differences on the different national websites of the multi-national trader, these national websites may well have different registration characteristics which are not problematic as such. However, if a shopper cannot complete the registration process on a particular national website due to the absence of a delivery address in the trader's Member State, and is thus prevented from seeing the offers on the particular national version of the trader, this would fall under the prohibition of geo-blocking under the Regulation. On the other hand, if, during the purchase, a shopper is asked to provide a delivery address and can only provide a delivery address accepted in the national version of the website, though this is not geo-blocking practice as such, it can be viewed as a limitation to the cross-border shopper imposed by the multi-national trader.

The 2019 Survey shows that in **46.8%** of the cases no registration issues were encountered with multinational traders, which is a lower figure compared to the main sample (56.4%). This is a first indication that registration issues are more common for multi-national traders when national versions of their websites are accessed cross-border. Most of the issues experienced were linked to the shopper's address details not being accepted. Restrictions to cross-border shopping in the form of failure to register on the website (due to any type of issue) were only slightly higher for the multi-national (16.7%) compared to the main sample (14.0%).

In conclusion, multi-national traders may be stricter when it comes to cross-border shoppers accessing national versions of their websites but this does not seem to translate in a correspondingly significantly higher overall failure rate, compared to the overall failure rate reported in the general analysis.

Figure 8 - Registration issues (multinational traders)

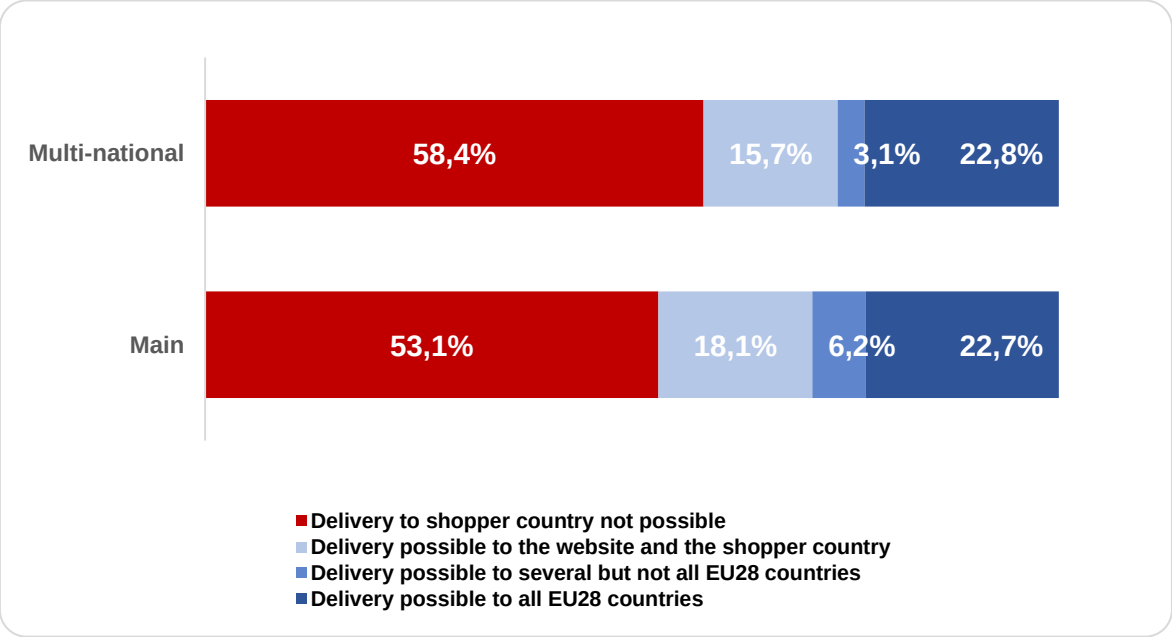


Source: Ipsos et al (2020)

With regard to **delivery,** multi-national traders might apply delivery limitations on their national websites by imposing limitations for a particular website targeting a given country to deliver (according to the applicable general terms and conditions) to another country, even if the trader is active there via another national website. This practice cannot be qualified as geo-blocking under the Regulation (as it does not address cross-border delivery), yet it may not be directly linked to general obstacles of cross-border activities affecting the trader (as the trader is already active in the customer's Member State). This practice may therefore be considered under the legal framework of the Services Directive (2006/123/EC) on a case by case basis, although it is not excluded that some limitations (as objective costs differences) could be objectively justified under the Directive.

In this context, the survey reveals that in **58,4**% of cases, cross-border shoppers were refused delivery of the product to their country and this is slightly higher compared to delivery restrictions observed in the main sample (53.1%); on the other hand in 15,7% of cases, delivery was possible to website and the shopper country.

Figure 9 - Delivery restrictions (multinational traders)



Source: Ipsos et al (2020)

2.3. Developments of consumers' cross-border access to offers

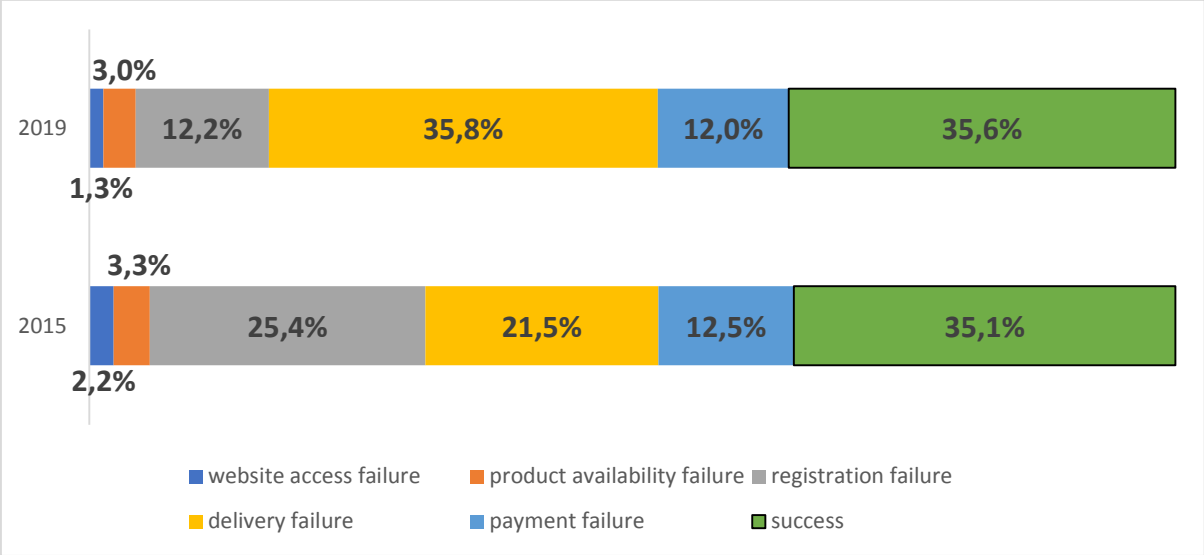
As mentioned in Section 1.1., the Regulation is one important element of the wider Digital Single Market strategy addressing traders' barriers in the internal market, one which attracted significant interest and expectations of the public opinion.

Overall, the 2019 Mystery Shopping Survey reveals that the success rate for a shopper to complete a cross-border purchase slightly increased compared to 2015, and this mostly due to improvements concerning access to websites and registration, and in spite of persisting or even increasing limitations in relation to cross-border delivery options[61].

[61] It is important to note that this overall success indicator includes also elements not directly addressed by the Regulation (such as cross-border delivery), which however slightly deteriorated and became more visible as other limitations (in particular at the registration stage) have been reduced, hence negatively impacted the overall success rate.

Thus, in the EU28, cross-border shoppers are able to successfully buy products in the same way a domestic shopper can in **around 1 in 3 of cross border shopping attempts, namely, in 35.6%** of the evaluated websites in the Survey. This is a very slight increase compared to 2015 **(+0.5ppts**). In the EU27, the percentage of successful purchases is 33.9%, with an increase of 1.6ppts compared to 2015.

Figure 10 - Failure and success rate per shopping stage (as percentage of the full sample) (EU28)



Source: Ipsos et al (2020)

However, while the Regulation was meant as an enabler for consumers and business to improve cross-border accessibility, it is obviously not meant to build a single market on its own.

Overall[62], Eurostat data shows that the (modest) growth of on-line purchases in 2019 from sellers in other Member States is in line with that of earlier years, i.e. +1pp from 21 to 22% of individuals[63]. The percentage of enterprises having made electronic sales to other EU countries, on the other hand, did not change in 2019 as compared to 2017 (9% of all enterprises, 43% of those selling on-line)[64].

These trends may also be significantly affected by the effect of the pandemic crisis, which had short but possibly also longer term impacts on e-commerce demand and

[62] We recall that this data and analysis pre-dates the COVID-19 crisis and therefore changes in consumer behaviour and enterprises selling online resulting from that crisis are not taken into account here.
[63] Eurostat (2020) isoc_ec_ibuy indicator.
[64] Eurostat (2020) isoc_ec_eseln2 indicator.

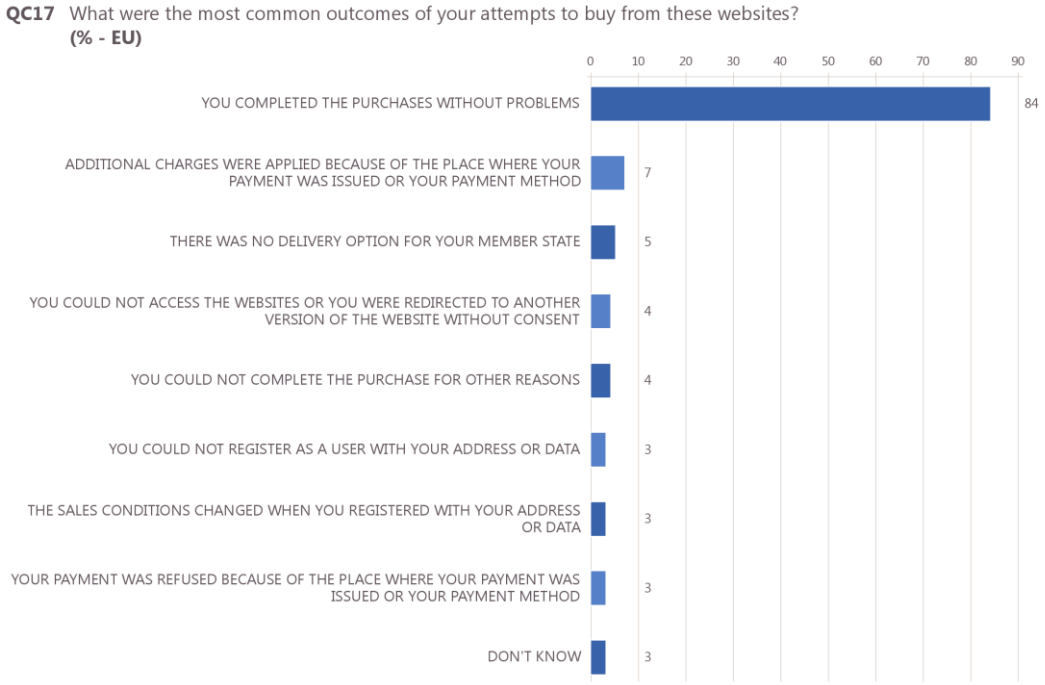
supply, including across borders, which could not be captured by the 2019 Mystery Shopping exercise and existing Eurostat data. This therefore requires further monitoring and research.

Indeed there may still be a significant potential for additional cross-border sales. A 2019 Special Eurobarometer survey[65] indicates that 37% of Europeans using the internet at least sometimes tried to buy goods or services on-line across border, with a large variation amongst age groups (46% for the 15-39 age group). While in the large majority (84%) of cases the purchase can be completed, in the rest of the cases the obstacles due to geo-blocking practices or limitations in delivery remain the most common outcome (Figure 11)[66]. The kind of problems encountered is relatively heterogeneous across Member States, as no issue consistently features as the most frequent in all or a majority of Member States. For example, delivery limitations rank very high (even over 20%) in specific countries, while they are less of a concern in others.

[65] Special Eurobarometer 503 - Attitudes towards the impact of digitalisation on daily lives, sec. VI available at https://data.europa.eu/euodp/en/data/dataset/S2228_92_4_503_ENG

[66] In this latter regard, the impact of delivery restrictions in the purchasing choice appears smaller than the extent of delivery restrictions still reported in the 2019 Mystery shopping exercise. This may be due to different methodology (looking at consumer experience, rather than objective evaluation of websites) and different reasons: obstacles do still affect the initial part of the consumer journey (hence the consumer does not realise the existence of these restrictions), the consumers interested to buy cross-border most likely try to buy from the proportion of traders already active across borders and/or the consumer may probably be steered towards versions of the websites that are more likely targeted to its market, not necessarily against its will (for instance by consenting to redirection or, in the context of websearch, access through marketplaces, etc…).

Figure 11 Outcomes when buying from websites in other EU countries



Source: Special Eurobarometer 503 (2020)

This would suggest that there are still margins to improve cross-border access, first of all by stepping up in the enforcement of the Regulation, but also through measures addressing the core issue of reluctance of traders in actively engaging in cross-border trade (still the majority of on-line sellers according to Eurostat data).

The findings in the above sections indeed suggest that some barriers to cross-border access to offers are being tackled through the provisions of the Regulation, although there is still the need to ensure full application, so that issues following direct contact with the trader by assistance or enforcement bodies can be effectively resolved.

The synergies with other measures of the DSM are relevant in this regard. The following measures are particularly important in facilitating the provisions of goods and

services across borders and will have an increasing impact on the development of the digital single market[67].

Reducing costs of compliance with VAT requirements

Cross-border sales of goods to consumers are normally taxed in the Member State where the final consumer is located. According to the rules currently applicable, this implies that the supplier who transports the goods should register for VAT in the country where the transport of the goods to the final consumer ends, if the threshold for distance sales of goods is exceeded in the Member State of the final consumer[68]. This in turn has an impact on the various applicable thresholds in different Member States and, consequently, the possible additional requirements for traders, triggered by cross-border sales. This is one of the reasons why the Regulation did not envisage an obligation for traders to deliver cross-border outside countries already served by the trader, according to the general conditions of access applicable to the purchase.

However, the recent reform of the VAT rules for E-commerce will entail significant changes concerning the administrative compliance with VAT requirements in case of cross-border sales.

Firstly, as of 1 July 2021, the current distance sales thresholds per EU Member State will be abolished. Instead an EU wide threshold of EUR 10,000 will be introduced applying to intra-EU distance sales, hence eliminating different approaches across different Member States. In addition, from the same date, the Mini-one-stop-shop (MOSS), currently available only for TBE services[69], will be expanded into a VAT One Stop Shop (VAT OSS). It will therefore also be available to suppliers of goods and services other than TBE services selling across borders to final consumers in the EU, as well as for the importation of low value consignments shipped from third countries to consumers in the EU, eliminating the obligation for them to be registered in Member States where they are not established. Moreover, for the latter case, VAT could be prepaid when purchasing online and declared and paid monthly by a supplier or an intermediary established in the EU if such a supplier/intermediary opts to use the Import

[67] In addition to the DSM measures, an overall review of the Vertical Block Exemption Regulation is also on-going, looking also at vertical contractual obstacles affecting the cross-border provision of services and goods in view of expiry of the that instrument by 31 May 2022.
[68] This threshold is either EUR 100.000 or EUR 35.000, depending on the choice made by the Member State where the transport ends.
[69] Telecom, Broadcasting and Electronically Supplied Services.

One Stop Shop. Following these changes, it is expected that traders will benefit from a substantial reduction in cross-border VAT-related compliance costs[70].

These reforms are meant to reduce the administrative obstacles related to VAT compliance affecting cross-border delivery, currently not directly targeted by the Regulation.

Increased transparency of cross-border parcel delivery prices

Regulation (EU) 2018/644 on cross-border parcel delivery services[71], which entered into force on 22 May 2018, has three key objectives:

- to enhance the regulatory oversight of parcel delivery services
- to increase the transparency of certain single-piece tariffs
- to assess tariffs for certain cross-border parcel delivery services

Furthermore, the Regulation confirms that consumers should be given information at the pre-contractual stage on the different options for cross-border parcel delivery, the charges payable and the complaints handling policies of the trader.

The Regulation stems from the Digital Single Market Strategy and is meant to facilitate and stimulate cross-border e-commerce, and complement the Postal Services Directive[72], by improving regulatory oversight of parcel delivery services and the transparency of cross-border tariffs, thus contributing to more affordable services. It essentially gives national regulators enhanced instruments for better monitoring and regulatory oversight of the parcel delivery market and provides for an affordability assessment of certain cross-border single-piece parcel tariffs.

As required by the Regulation, each year, the Commission publishes on a website the public lists of tariffs of those key single-piece postal items that are most frequently used in shipping cross-border e-commerce goods. For 2019, it lists more than 46.000 prices of more than 400 providers from all over Europe, and new tariffs will be included each year by the end of March. Thanks to these reporting obligations and the online transparency tool created by the Commission, European consumers can now compare cross-border parcel delivery services and tariffs offered by the cross-border delivery

[70] A move to the single EU VAT portal is estimated to be up to 95% less costly for these businesses.

[71] Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services, OJ L 112, 2.5.2018, p. 19–28.

[72] Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service amended by Directives 2002/39/EC with regard to the further opening to competition of Community postal services and 2008/6/EC with regard to the full accomplishment of the internal market of Community postal services.

operators in their countries (see: https://ec.europa.eu/growth/sectors/postal-services/parcel-delivery/public-tariffs-cross-border_en). It is important to note that this website is non-commercial and neutral in character, and is therefore not a product comparison tool (that would, for example, redirect the user to a provider's website).

The Commission has in the meantime commissioned studies, including on development of Cross-border E-commerce through Parcel Delivery, and on users' needs in the postal sector[73].

The Commission will adopt a report on the implementation of the Regulation on cross-border parcel delivery services, as required by this Regulation, to assess, amongst other things, its contribution to the improvement of cross-border parcel delivery services and its impact on e-commerce.

In addition, as required by article 23 of the Postal Services Directive[74],the European Commission will submit a report on the application of the Directive to the European Parliament and Council. Considering the substantive changes in the market brought about by digitalisation and ecommerce the next application report will be combined with an evaluation of the Postal Services Directive, in line with the better regulation requirements. This does not imply a commitment at this stage to revise the Directive. A public consultation has been launched recently on this[75].

Increasing harmonisation of consumer protection rules, including in the field of guarantees

The Regulation does not modify the EU rules on applicable law and on jurisdiction, even if it does provide some *ex lege* clarifications[76]. The identification of the consumer protection rules applicable to the contract therefore remain subject to a case by case

[73] https://ec.europa.eu/growth/content/delivering-future-iii-workshop-developments-postal-sector_en.
[74] Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14), as amended by Directives 2002/39/EC with regard to the further opening to competition of Community postal services and 2008/6/EC with regard to the full accomplishment of the internal market of Community postal services.
[75] The European Commission has launched a targeted consultation on cross-border parcel delivery to gather respondents' views on the application of Regulation (EU) 2018/644 on cross-border parcel delivery services running until 30 September 2020, link available at https://ec.europa.eu/eusurvey/runner/b8d39156-2b7b-6b0e-4de7-f472886c1b33.
[76] Article 1(6) of the regulation stipulates that mere compliance with its obligations does not of itself mean that a trader is directing his activities to a particular Member State (see also Recital 13). Therefore the mere conclusion of a contract (online or off-line), resulting from compliance with the obligations laid down in the Regulation cannot imply that the trader directs activities to the consumer's Member State. Similarly, a trader cannot be considered to be directing activities exclusively on the basis of the fact that the trader provides information and assistance to the consumer after conclusion of such a contract.

assessment on the basis of the rules laid down in the Rome I Regulation (2008/593) based on whether the trader pursues his activities in the consumer residence's Member State or is directing activities to the Member State of the consumer, and the corresponding CJEU case law[77]. The Regulation however clarifies that activities merely implementing the obligations of the Regulation cannot be included in any such assessment.

Possible divergences of national consumer protection rules applicable to the contract (such as mandatory provisions) are therefore often mentioned as possible justifications for refusal to sell abroad and/or for the application of different conditions[78]. Measures recently adopted in the framework of the DSM, however, may bring about changes in the near future.

First of all, in the framework of the digital contracts rules[79], two Directives[80] have been adopted in 2019 aiming at harmonising the main mandatory consumer rights applicable to the supply of digital content and sales of goods. These Directives will need to be transposed by Member States by 1/1/2022, and will reduce the costs resulting from differences in contract law, create more legal certainty for businesses and help consumers make the most of shopping across the EU.

Thanks to the harmonised rules, businesses will be able to supply digital content and sell goods online to consumers throughout the EU, based on the same set of contract law rules, in particular as regards remedies in case of faulty products. With regard to goods, the strengthened harmonisation will ensure a common two years timeframe to report defective goods to the seller and a common range of applicable remedies including repairing, replacement and contract termination/reduction of price, including where goods are located in a place that is different from where they were originally delivered[81].

[77] For an overview of the case law in particular on the interpretation of the notion of "directing activities" relevant in case of sales to consumers, see Sec. 4.2. of the Q&A document on the Geo-blocking Regulation published in 2018.

[78] Differences in national contract laws are reported as a significant obstacle for cross-border sales for four out of ten EU retailers (39%) currently selling online.

[79] https://ec.europa.eu/info/business-economy-euro/doing-business-eu/contract-rules/digital-contracts/digital-contract-rules_en.

[80] Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services and Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.

[81] In this regard see, for instance, Article 13(3) and (4)a of Directive (EU) 2019/771 as also clarified by Recital 49 ("The seller should be allowed to refuse to bring the goods into conformity if both repair and

In addition, two directives[82] that the Commission proposed under the "New Deal for Consumers" package of April 2018 aim, *inter alia*, at improving compliance with EU consumer protection legislation, in particular through the introduction of collective redress mechanisms and strengthening public enforcement. The first Directive on Better enforcement and modernisation of EU consumer protection rules was adopted on 27 November and will be applicable as from 28 May 2022. It amends the existing Directives on unfair contract terms (93/13/EEC), price indication (98/6/EC), unfair commercial practices (2005/29/EC) and consumer rights (2011/83/EU). Moreover, revised rules on procedural mechanisms for consumer collective redress were agreed by the parliament and the Council at political level on 22 June 2020.

Strengthened and synergetic enforcement of the wider non-discrimination acquis (Article 20 Services Directive and the Regulation) within the CPC network

The Regulation is *lex specialis* to the Services Directive (2006/123/EC) and will prevail over it in the situations covered by the Regulation.

As far as the provision of services in the scope of the Services Directive is concerned, the general principle of non-discrimination of the service recipients is specified by Article 20(2) of the Directive, according to which Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria. Application of the non-discrimination principle, as specified in this Article, depends on a case-by-case assessment of the trader's practices. Objective justification for differential treatment may relate, for instance, to the lack of the required intellectual property rights in a particular territory, additional costs incurred because of the distance involved or the technical characteristics of the provision of the service, or

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replacement are impossible, or they would impose disproportionate costs on the seller. The same should apply if either repair or replacement is impossible and the alternative remedy would impose disproportionate costs on the seller. For instance, if goods are located in a place that is different from where they were originally delivered, the costs of postage and carriage could become disproportionate for the seller").

[82] Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules in OJ L 328, 18.12.2019, p. 7; proposal for a Directive on representative actions for the protection of the collective interests of consumers and repealing the Injunctions Directive 2009/22/EC ('Representative Actions Directive'), whose formal adoption by the parliament and the Council shoul occur by the end of 2020. For more information: https://ec.europa.eu/info/law/law-topic/consumers/review-eu-consumer-law-new-deal-consumers_en.

different market conditions, such as higher or lower demand influenced by seasonality, different holidays periods in the Member States and pricing by different competitors. In comparison with the Regulation, the Services Directive establishes a broader case-by-case approach as to the justifications of the differences in access applied by the traders. The Commission services have however provided guidance on how to apply that Article in the SWD(2012)146, including the extent to which differential treatment and/or outright refusal to provide the service may be objectively justified[83].

Article 20 of the Services Directive remains applicable to situations not covered by the Regulation. For example, while delivery limitations are not addressed by the Regulation, under Article 20(2) of the Directive these may be subject to scrutiny and this scrutiny should take into account the fact that at least one delivery option in a cross-border context should be available in all Member States and could eventually justify higher costs charged[84]. Further reflection may be necessary on whether and to what extent marketing strategies of multi-territorial traders, deliberately excluding delivery options available in different versions of their websites where they are nevertheless active, may also have a discriminatory character, in particular where this makes in practice impossible access to some products, even taking into account some possible objective costs differences. Also refusal to supply services included in the scope because of intellectual property rights concerned, while not covered by Article 4 of the Regulation, can be subject to scrutiny under Article 20(2) of the Services Directive, including with regard to the existence of required rights[85]. Of course in all these cases the case by case assessment needs to be carried out in order to assess whether an objective justification exists. Moreover, it should be taken into account that some other issues originally covered by the Services Directive are now superseded by specific provisions of the Regulation. The issue of relationship of the Regulation and the Directive has indeed also been raised in the context of bilateral contacts with enforcement and assistance authorities, and may require further clarifications in the future. Also, the evolving legal framework related to the provision of services across borders, in particular in the context of the Digital Single Market, may need to be taken into account when implementing Article 20(2) of the Directive, and in particular the existence of objective justifications to outright refusal to sell.

In this regard, moreover, it should be noted that the new Consumer Protection Cooperation (CPC) Regulation (Regulation (EU) No 2017/2394) applicable as from 17 January 2020 extends the scope of the CPC Regulation to allow for cooperation

[83] While some of the indications provided therein are now superseded by the application of the Regulation, others however are still valid with regard to issues not covered by the Regulation.
[84] See SWD(2012) 146 page 16.
[85] See SWD(2012) 146 page 18.

between the CPC authorities in new areas, and, notably, on the claims caught by Article 20 of the Services Directive. This requires the identification within the network of a competent authority for its enforcement and allows cooperation between the authorities in the cross border context in the situations not covered by the Regulation but caught by the Directive.

2.4.Findings

The preliminary assessment on the first months of implementation of the Regulation by Member States and application by traders suggests the following conclusions in this regard:

- The implementation of the Regulation **by the Member States** has been affected by delays. While this did not affect the applicability of the rights and obligation thanks to its direct applicability, it has however affected the possibility to trigger in particular public enforcement and supervision in the majority of Member States, at least during the first half of 2019.
- While in most Member States the consumer protection authorities are responsible for the enforcement of the Regulation in B2C situations, there are large variations as regards applicable sanctions across Member States in case of the infringements of the Regulation. Also, the range of maximum and minimum fines often varies considerably within a Member State. Moreover, enforcement systems for B2B typically follow two different approaches (only private enforcement; private and public enforcement), both almost equally widespread. The effectiveness of the enforcement systems, including measures in case of infringements, in particular for B2B, will therefore need to be assessed further, also on the basis of the practical application and taking into account the overall system of remedies available to the victims of infringements.
- Some national bodies are confronted with a non-negligible amount of queries and complaints, although this is not equally spread across the EU. Sometimes these are due to delays in implementation or lack of awareness by traders, often corrected upon entering in contact with the operator. A sample of websites (491) was also subject to coordinated EU-wide screening by consumer protection authorities in the context of the CPC network ("sweeps"), leading to more in-depth investigation in a number of cases, including with regard to the Regulation. However, it is also quite common that these complaints are based on wider expectations on the scope of the Regulation, in particular as regards the right to have delivery at home, as this instrument is thought to be creating the single market dimension itself, rather than simplifying the application of the general non-discrimination principle in selected cases.

- As regards application of the Regulation **by traders**, the Commission has also commissioned a large sample survey (approx. 9000) of traders' websites in 2019, in order to check cross-border accessibility. The exercise reveals that after application of the Regulation for a short time of, some limited progress is emerging as regards conditions of access to websites, compared to a similar exercise carried out in 2015.
- In particular, reductions in obstacles to cross-border access to websites (-0,8ppt compared to 2015; with access ensured in 98.7% of cases in 2019) and above all to registration by foreign customers (-12,9ppt, halved from 26,9% in 2015) can be reported.
- At the same time, it should be noted that possible obstacles to access may still affect individual items or parts of the website (geo-blocking in relation to the same product availability decreased slightly from 2015 to 2019, by 0,1ppt). Moreover, the range of registration and payment issues still remain significant for a wide range of sampled websites (for 14,0% and 10,4% of the websites accessed during these respective stages of an online shopping process), meaning that even if the consumer can access the website cross-border and find a same product, he or she may often still not be able to place the order and pay.
- Overall, this led to a slight increase in the overall success rate of cross-border shopping attempts compared to 2015 (+0,5ppt), in spite of the fact that cross-border delivery limitations (not mandated by the Regulation) slightly deteriorated. Still this success purchase indicator, which includes cross-border delivery, shows that approximately 1 in 3 of cross-border shopping attempts was successful (namely, 35.6%).
- In conclusion, there still seems to exist a margin for improvements in ensuring the elimination of access obstacles through application of the Regulation.
- This, however, is not the only means of ensuring more active cross-border engagement of traders beyond the aspects directly regulated by the Regulation. Indeed the Survey also shows that limitations of delivery options offered by traders remain high, and even slightly increased compared to 2015, thus meaning that even if the consumer can access website cross-border and find a same product, he or she may still not be able to have it delivered to his/her country. Similarly, the Survey also shows that the **multi-national traders** operating via different national website versions also often apply delivery limitations on their national websites, so that offers/products available in one version cannot be delivered according to the applicable general terms and conditions in another Member State where the trader is nevertheless active via another national website (The Survey reveals that in 58.4 % of cases, cross-borders shoppers were refused delivery to their country).

- The application in the near future of several other measures addressing obstacles encountered by traders in cross-border trade may be important in fostering active engagement of traders.
- The remaining potential discriminatory issues not directly addressed by the Regulation may still be subject to case by case assessment under Article 20(2) of the Services Directive, and the synergies between these two instruments may need to be looked into, also in view of the evolving regulatory framework following the entry into force of the DSM measures.