

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

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SUBCOMMITTEE IV ON FLANKING AND HORIZONTAL POLICIES

EEA EFTA Comment

on the proposal for a Regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC – COM(2016) 289

1. INTRODUCTION

1. The EEA EFTA States refer to the EEA EFTA Comment of 15 July 2015 on the upcoming Single Market Strategy for Goods and Services, where the EEA EFTA States emphasised their commitment to a well-functioning Single Market. The Single Market is a key driver to boost economic growth and jobs throughout Europe and should be developed continuously. This is no time to pause. At this stage it is particularly important to make the Single Market a reality for individual citizens.

2. The EEA EFTA States welcome and support the proposal for a regulation addressing geo-blocking and discrimination in the Single Market. The legitimacy of the Single Market suffers when citizens encounter discrimination based on nationality and/or place of residence or establishment. The proposal is a step to improve the situation of citizens and businesses alike. It is appropriate to handle geo-blocking online and discrimination in other situations in the same legal instrument. As more of our activities moves into the digital sphere, the differences between online and offline transactions should be reduced.

3. The proposal should be seen in light of the general prohibition of discrimination based on nationality established in the Treaty on the Functioning of the European Union Article 18 and the prohibition of discrimination of recipient of services established in the Services Directive (2006/123/EC) Article 20. The prohibitions in Articles 3 to 5 of the proposal may be seen as clarifications of already established principles of non-discrimination. It is therefore the view of the EEA EFTA States that the scope of the proposal should be wide. It is important that the prohibitions on discrimination in articles 3 to 5 of the proposal are not watered down in the legislative process. If some of the limitations on the scope of the Regulation could be

abolished or modified, the proposal could have a stronger impact on key consumer concerns relating to discrimination in the digital sphere, as expressed by consumer organisations across Europe.

2. SPECIFIC ISSUES

4. Article 1 (2) of the proposal describes three situations where the proposed Regulation should apply. The wording is complicated and may create uncertainty. The room for misunderstanding grows when the three situations in article 1 (2) are read in conjunction with the three situations described in article 4 (1). The rationale behind article 1 (2) seems to be to exclude the purely domestic situation where no cross-border element exists. The EEA EFTA States therefore believe that article 1 (2) should be reworded to only exclude situations lacking a cross border element. This will improve legal certainty and make the Regulation easier to understand. This legislation is meant to be read and used by individual citizens and businesses and it is thus important that the wording is easily understandable.

5. To be able to block or limit access to online interfaces as well as redirecting customers based on nationality, place of residence or establishment as regulated in Article 3 of the proposal, the use of electronically transferred information such as IP-addresses is often required. In some situations this may entail the processing of personal data that requires legitimate grounds as provided for in the Data Protection Directive (95/46/EC) Article 7. The EEA EFTA States believe that a reference to this Directive and the need for justifiable grounds for processing personal data should be included in a recital to the proposed Regulation.

6. Article 6 of the proposal establishes that agreements imposing on traders obligations, in respect of passive sales, to act in violation of this Regulation shall be automatically void. The EEA EFTA States support the inclusion of this Article. It provides important legal certainty. In particular small and medium-sized enterprises may come under pressure from suppliers to not engage in passive sales. Contractual prohibitions against passive sales reduces competition and such agreements covered by the proposed Regulation, should not be justifiable. It is therefore appropriate to establish that such agreements covered by the proposed Regulation are void.

7. The EEA EFTA States support the proposal to provide assistance to consumers and establish effective mechanisms for enforcing the Regulation as provided for in Articles 7 and 8. In the EEA EFTA Comment dated 15 July 2015 on the upcoming Single Market Strategy for Goods and Services the EEA EFTA States held that emphasis should be put on better application of existing tools and principles. In line with this view, the EEA EFTA States believe that it should, as part of the review provided for in Article 9 of the proposal, be evaluated if the assistance and enforcement mechanisms should be made applicable to the provision on discrimination in the Services Directive (2006/123/EC) Article 20. It should also be evaluated if article 1 (3) of the proposal should be amended to expand the scope of the Regulation.

These comments are given without prejudice to further comments from the EEA EFTA States on the proposed Regulation.