



Presentazione alla
Regione Emilia Romagna
il 27.2.2019

Strategia per il Mercato Unico Digitale: azioni realizzate e in corso di definizione per facilitare l'e- commerce nel Mercato Unico, in particolare a favore delle PMI

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Agenda

- Background and context information on the Digital Single Market policy
- Regulation 302/2018
- Platform to Business Regulation
- Other DSM initiatives including revised consumer protection rules
- International ecommerce negotiations

State of play of the DSM e-commerce measures

- *Key DSM e-commerce measures (adopted)*
 1. *Regulation addressing unjustified **geo-blocking***
 2. *Regulation on cross-border **parcel delivery** services.*
 3. *Package on **Value Added Tax** for e-Commerce*
 4. *Review of Regulation on **Consumer Protection Cooperation***
 5. *Revised Directive on **Payment Services** and **Payment Accounts** Directive*

It is time of effective implementation and enforcement

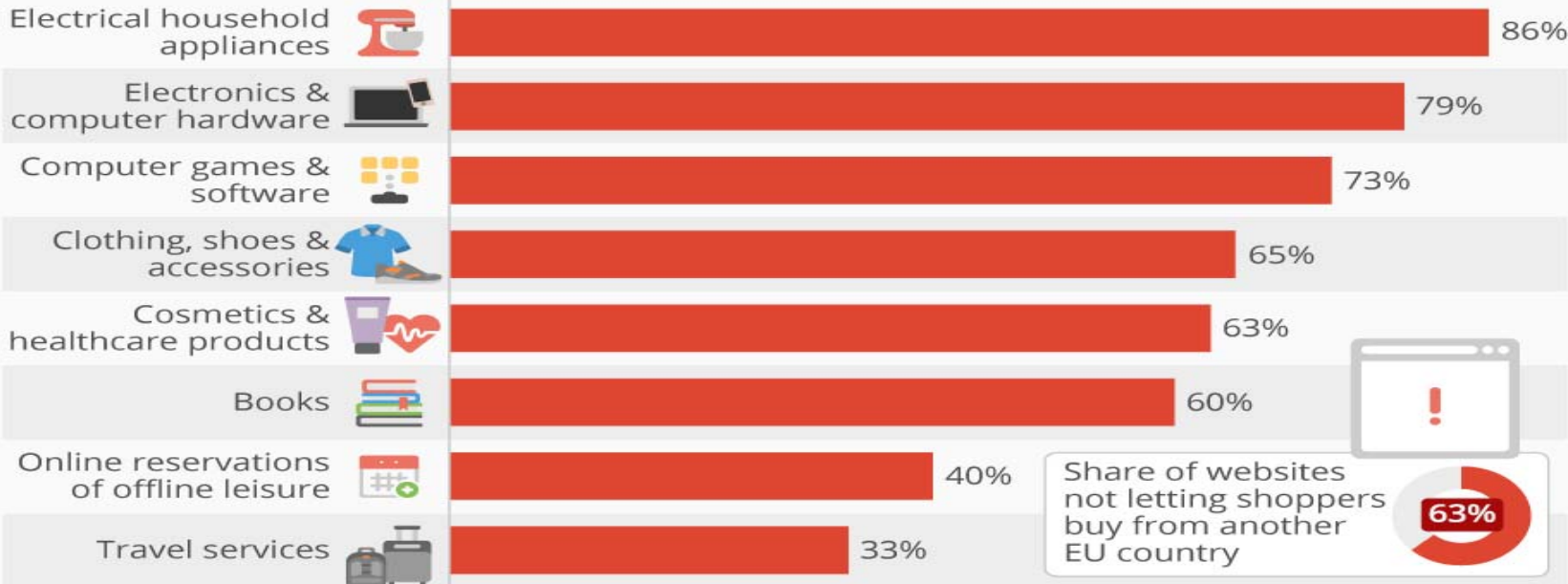
Key DSM e-commerce measures (pending)

1. *Proposal on supply of **digital content** and on **online and other distance sale of goods**.*
 2. *Legislative proposals under the **New Deal for Consumers***
 3. *Proposed Regulation on promoting **fairness and transparency for business users of online intermediation services***
- *Need to work full speed to adopt the rules*

Geoblocking Background information

Geoblocking Prevalent For EU's Online Shoppers

Geoblocking on e-commerce websites in the EU by sector in 2016



* survey carried out through 'mystery shopping' on over 10,000 e-commerce websites in the EU.

Source: European Commission



Geoblocking background

European customers face discrimination when accessing goods and services based on their nationality or place of residence/establishment.

Non-discrimination principle in Art. 20(2) of "Services Directive", but unclear what "objective criteria" can justify difference in treatment.

=> Action needed to tackle geo-blocking and other forms of discrimination (announced in DSM/SMS).

Examples of widespread discrimination cases

Ex. 1 – Car rentals (summer 2014)

Six major car rental firms applied major price differences based on the residence of the buyer even though same website, same car, same time period, same location.

Ex. 2 – Amusement parks (2015-2016)

Companies applied discriminatory practices to ticket prices, packages, special offers and payment methods for foreigners.

Structure

- *General information (context, background)*
- *Scope: including territorial aspects, sector-specific, AV and non-AV, bundles, B2B/B2C, on-line marketplaces...*
- *On-line interfaces: including extent of access, storage of consent, purely informative websites...*
- *Discrimination in access to goods and services: biggest category, some 23 questions, clarification on the extent of the prohibitions and impact on national requirements*
- *Concerns also enforcement and relationship with other DSM texts*

Scope of Regulation (EU) 302/2018

- *Cross-border commercial relationships (no purely domestic)*
- *Scope of Directive 2006/123/EC*
 - I.e. no audiovisual, transport (where however sector-specific rules applies), etc...
- *Copyright, taxation, international private law rules not affected*
 - But Regulation clarifies that mere compliance with the Regulation, on that ground alone, cannot be considered as directing activities in another Member State



NON DISCRIMINATION IN APPLYING GENERAL CONDITIONS (Article 4)

- **Goods picked up or delivered in MS served by trader**
- **Electronically provided services (Cloud & hosting services...), but no copyright protected (e-books, music...)**
- **Concert tickets, hotels, car rental...**



ACCESS TO WEBSITES (Article 3)

**Ban of blocking
Ban of automatic re-routing:
Explicit consent needed**



NON-DISCRIMINATION IN PAYMENTS (Article 5)

**If through e-payment method
If customer authentication pursuant to PSD2 applied
If currency accepted by trader**

Relationship with competition law (Article 6)

Direct and unconditional prohibition of passive sale restrictions in vertical agreements (to avoid circumvention and increase legal certainty), without need of assessment under competition law

It only applies to restrictions in direct contrast with the prohibitions of the Regulation (for instance ban to reply to unsolicited requests without delivery outside the contractually agreed area)

Enforcement (Articles 7-8)

- *Ensuring effective enforcement, in particular across-borders, is key*
- *Different national systems and situations taken into account (court vs administrative-based, in particular for B2B disputes)*
- *Assistance to consumers particularly needed in cross-border situations*
- *Member States should have notified by 3.12.18), designated a body responsible for providing assistance to consumers*
- *The Commission is publishing notifications and implementing measures:
<https://ec.europa.eu/digital-single-market/en/policies/geoblocking>*



Q&A document of Commission services

- *Early clarifications and information to the public (customers and traders)*
- *Links available at http://europa.eu/rapid/press-release_MEX-18-2501_en.htm (geoblocking item)*
- *Short information document with 10 key features*
- *Extensive Q&A document: <https://ec.europa.eu/digital-single-market/en/news/geo-blocking-regulation-questions-and-answers>*
 - Some 70 questions
 - Based on a number of questions raised by stakeholders, MS, customers during and after the negotiations
 - It does not contain any authoritative interpretation of the Geo-blocking Regulation and it does not constitute a decision or position of the Commission.
 - It is without prejudice to any such decision or position of the Commission and to the powers of the Court of Justice of the EU to interpret the Geo-blocking Regulation

Practical Guidance/Infographics

- <https://ec.europa.eu/digital-single-market/en/news/geoblocking-regulation-questions-and-answers>
- <https://ec.europa.eu/digital-single-market/en/news/e-commerce-eu-how-you-can-make-most-out-it-consumer>
- <https://ec.europa.eu/digital-single-market/en/news/ending-unjustified-geoblocking-boost-online-shopping-eu>

P2B initiative – three pillars

Transparent & fair contracts

Online platforms **free** to unilaterally determine the rules of the game
BUT
such rules shall be **clear, unequivocal** and **spelled out upfront**

Effective redress

Online platforms shall provide efficient internal complaint-handling and participate in good faith in mediation mechanisms
FOR
quick and effective out-of-court conflict resolution

Monitoring

Close study of the market development in order to identify problems, opportunities and to **inform possible future policy-making** on the online platform economy

4.

DATA ACCESS

Unclear data access and use policies

The providers of these services have to **formulate and publish general policies** on what data generated through their services can be accessed, by whom and under what conditions.

5.

DISCRIMINATION

Discrimination of business users - favouring of platforms' own services

Online intermediation services providers should be **transparent on how they treat their own goods or services** compared to those offered by their professional users.

6.

MOST-FAVOURLED NATION CLAUSES

Limit businesses' freedom to offer better conditions outside the platform

Providers of online intermediation services will be **required to explain the use of contract clauses demanding the most favourable range or price** of goods and services offered by their professional users.

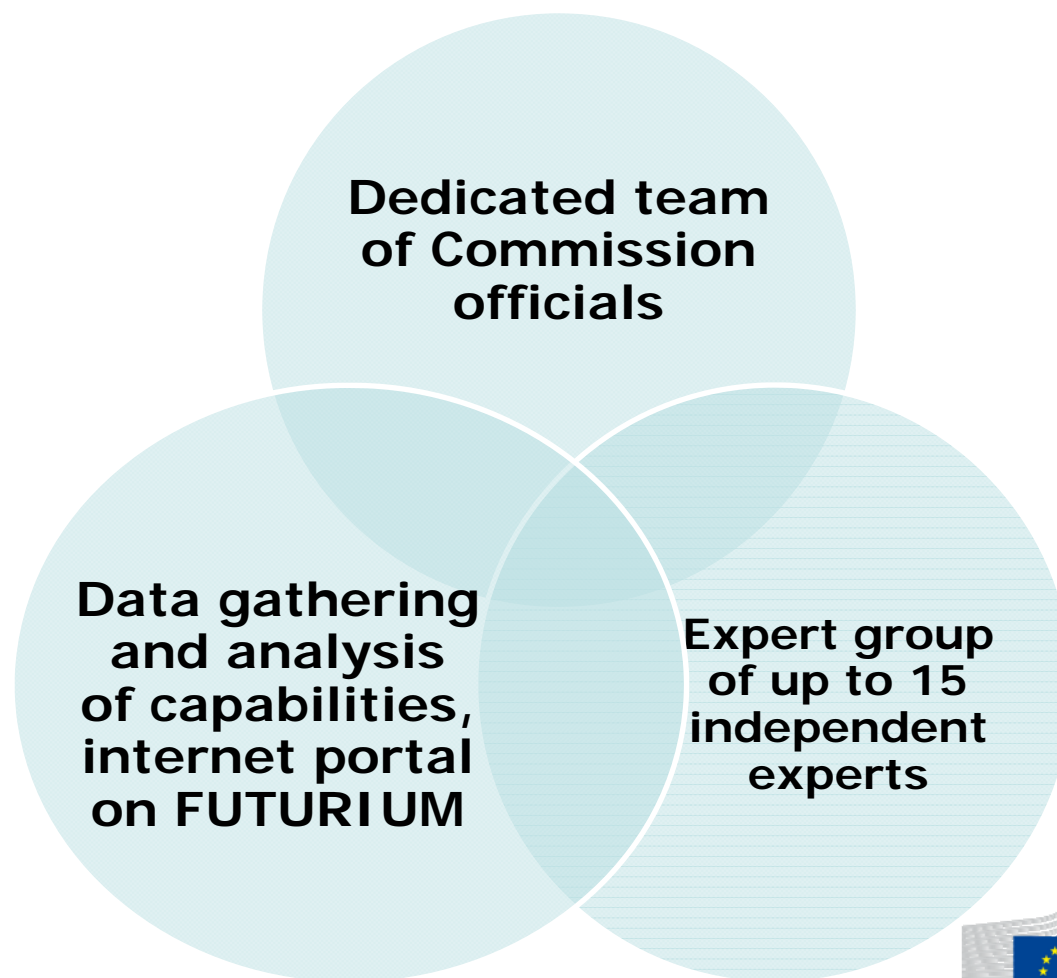
7.

LACK OF REDRESS

1. Inexistent or ineffective **platform-internal complaint-handling mechanisms**
2. Inexistent specialised and effective **external, out-of-court redress mechanisms**
3. Limited and costly **access to EU courts**

1. Online platforms will have to set up or have in place **internal complaint handling systems** (exemption for small enterprises)
2. Business users will have access to out-of-court dispute settlement **through easily accessible external mediators.**
3. Representative organisations or associations will be able to defend businesses in courts – **injunctive relief.**

Monitoring: Observatory on the Online Platform Economy



Observatory operational

- *Established by official decision on 26 April*
- *15 leading platform experts nominated 7 September*
- *Observatory includes EC task force, web presence; research funds fully operational Q4 2018*

Starting research on key issues (e.g. algorithm decision-making, digital advertising, vertical discrimination)

P2B Regulation - state of play

- *Study and consultation of stakeholders*
- *Commission proposal adopted 26 April 2018*
- *With co-legislators (European Parliament, Council)*
- *Inter-institutional negotiations (“trilogue”) started in December*
- *Agreement in February 2019, should enter into force in April and be applicable one year later*

E-commerce **international**

- *EU open for international cooperation*
- *EU ready to contribute, while seeking level playing field for European companies and reciprocity*
- *Development of multilateral rules on ecommerce has potential to boost digital trade, growth and jobs*
- *e-commerce is global – therefore international discussions on values and ground rules important (e.g. *Joint Statement Initiative on e-Commerce*)*
- *Momentum to push digital agenda to the benefit of developed & developing countries*

Recommendations

- *E-commerce has significant economic and societal benefits*
- *Avoid barriers to digital trade (e.g. unjustified localisation requirements)*
- *Establish regional single markets*
- *Use and contribute to international standards & certifications*
- Engage in shaping global e-commerce ground rules
- EU ready to engage in international negotiations opened in Davos in January

New Deal for Consumers proposal

11.4.2018

- *Directives covered by the evaluations*
- *Unfair commercial practices directive*
- *Consumer sales and guarantees directive*
- *Unfair contract terms directive*
- *Misleading and comparative advertising directive*
- *Injunctions directive*
- *Consumer rights directive*

- **1. Strengthening consumer rights online**
- **More transparency in online market places** – Consumers clearly informed whom buying from, trader/private person, if consumer rights protect
- **More transparency on search results on online platforms** –info when search result being paid for by trader & main parameters ranking results.
- **New consumer rights for “free” digital services** –14 days withdrawal right extended to ‘free’ digital services for which consumers provide personal data, i.e. cloud storage services, social media or email accounts.

2. Giving consumers the tools to enforce their rights and get compensation

- ***Representative action, the European way*** – *Qualified entity (consumer organisation) can seek redress (compensation/replacement/repair) for consumers harmed by illegal commercial practice, launch collective actions in courts.*
- ***Better protection against unfair commercial practices*** – *Consumers right to claim individual remedies (financial compensation/termination of contract) when unfair commercial practices (aggressive/misleading marketing).*

- **3. Introducing effective penalties for violations of EU consumer law**
- Consumer authorities power to impose coordinated effective, proportionate & dissuasive penalties; **maximum fine 4 % trader's annual turnover.**
- **4. Tackling dual quality of consumer products**
- Updated UCPD, national authorities can assess and address misleading commercial practices on marketing of products.
- **5. Improved conditions for businesses**
- Remove unnecessary burdens for businesses, lifting obligations on companies as regards the consumer's withdrawal right. **more flexibility** traders can communicate with consumers

Digital contracts for Europe

State of Play

- *Proposal concerns contract rules on the supply of digital content (streaming music)*
- *Proposal contract rules on the online sale of goods (buying a camera online)*
- *Adopted in 12.2015, new proposal to cover online offline for online goods, still under negotiation.*
- *On 8.6.2017, Council [position](#) on digital content.*
- *General agreement after trialogues in February 2019....*

Projected effects of harmonised rules

- *Removing contract law-related obstacles, at least >122,000 businesses will sell online in other MS*
- *8-13 million consumers will buy online in other MS*
- *EU GDP increase by €4 billion*
- *Increased competition drive consumer prices down, additional consumer welfare, increase household consumption in the EU by €18 billion*

Questions?



We look forward to hearing your comments and liaising with you, also with regard to our work on the report on the possible extension of the scope of the Geoblocking Regulation and proposals for future Commission on ecommerce

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