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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

on the first short-term review of the Geo-blocking Regulation

{SWD(2020) 294 final}

EXECUTIVE SUMMARY

- The Geo-blocking Regulation outlaws unjustified discrimination of customers buying goods or services. It ensures that customers' nationality, place of residence or place of establishment cannot be used to refuse access to an online shop (e.g. for electronics or clothing) or to a service provided online and consumed off-line (e.g. car rental) in the EU, including where this discrimination is related to means of payment.
- These rules have been applicable since 3 December 2018. The Regulation was part of the digital-single-market package of measures agreed for e-commerce. Other related measures to facilitate cross-border e-commerce included new rules on cross-border parcel-delivery services (applicable as from May 2018), revised consumer-protection rules, and new VAT rules for online sales of goods and services. A range of new consumer-protection rules will enter into force during 2022, while the VAT rules will enter into force in July 2021.
- In this report, the Commission takes stock of the first phase of implementation of the Geo-blocking Regulation. Such an early review was agreed upon in the negotiations, partly to assess the opportunity for extending its scope to other services, such as copyright-protected content. At the same time, the review was finalised in the middle of the outbreak of the COVID-19 crisis, so the data and analysis in the review could not take into account the possible effects of the pandemic.
- On the implementation so far, the Commission's findings show good consumer awareness and some initial positive effects. For example, blocking access/registration to websites – or rerouting consumers to other websites – has decreased. On the other hand, there have been significant delays in the empowerment of enforcement bodies by most Member States. Moreover, traders continue to be reluctant to offer cross-border delivery options, which is not part of the obligations currently imposed by the Regulation. Improvements on these issues can be expected in the near term, notably once all the e-commerce measures of the digital-single-market strategy enter into force and legal predictability is increased.
- On the feasibility to now extend the scope of the Regulation, particularly for copyright-protected content online, the data presented in the report suggest that the effects would vary by type of content, depending on the level of consumer demand and on the availability of content across the EU. For instance, the effects on consumer welfare of extending the scope of the Regulation to music streaming could even be negative, as prices may rise in certain Member States where these services are currently less expensive. The report identifies potential benefits, in particular for audiovisual content, the availability of which is often limited within national borders and access to which is often geo-blocked. However, the report also identifies possible challenges for investment in content production and implications for the overall sector ecosystem and welfare impact requiring further assessments. Overall, the effects of extending the scope of the Regulation would largely depend on copyright-licensing practices and on copyright-law considerations.

- At this stage, the Commission takes the view that the full effects of the Regulation will only become apparent with time, as enforcement is strengthened and other relevant (e-commerce) measures become applicable and the full impact of the Covid-19 crisis on the various sectors involved can be assessed. In the meantime, follow-up actions should focus on further monitoring and awareness-raising, while stepping up enforcement and guidance.
- On audiovisual content in particular, the Commission will engage in a dialogue with stakeholders with a view to fostering circulation of quality content across the EU. This could take place as part of the European industrial and recovery policy for media and the creative industries, which will be further outlined in the upcoming media and audiovisual action plan.
- Accordingly, another stock-taking exercise should be planned for 2022. The outcome of this monitoring will determine whether the Commission will then consider proposing amendments to the Regulation or any other follow-up measures, including appropriate legislative intervention.

1. INTRODUCTION

In a truly connected digital single market, consumers expect seamless access to goods and services across borders. Since 3 December 2018, the Geo-blocking Regulation[1] (hereinafter 'the Regulation') prohibits unjustified discrimination of customers (consumers and undertakings purchasing as end users) shopping online, purely based on their nationality, place of residence or place of establishment. This includes situations where a customer buying across borders is prevented from finalising the purchase, or is asked to pay with a debit or credit card from a certain country. The goal of the Regulation was to increase opportunities for consumers and businesses to buy across borders: consumers should be able to 'shop like a local' anywhere in the EU.

The Regulation stipulated a short term review after 18 months from its application, and that this review should include an assessment of the feasibility to extend the Regulation's scope, in particular for online services giving access to copyright-protected content[2] such as music, video games, films, or e-books.

This report contains the Commission's main findings for the first period of implementation of the Regulation. It is structured in three main sections. Section 2 discusses implementation by Member States and traders, and changing consumer expectations. Section 3 discusses the opportunities and challenges for a change of scope of the Regulation. Section 4 concludes with a series of follow-up actions.

The accompanying staff working document contains more detailed evidence and analysis supporting these findings.

[1] Regulation (EU) 302/2018.
[2] See Art 9(2) of the Regulation.

2. IMPLEMENTATION OF THE REGULATION

This section contains: (i) initial findings on the implementation of the Regulation by Member States; (ii) some general trends in consumer awareness and expectations; and (iii) details on implementation of the Regulation by traders. It also summarises the synergies with other related legislative initiatives that have come into force, or are about to come into force.

2.1. Implementation by Member States

For cases where a dispute arises between a consumer and trader, Member States have had an obligation to designate, by 3 December 2018, a body or bodies responsible for providing practical assistance to consumers. They should also have ensured the availability of injunctions, and cooperation within the consumer-protection cooperation (CPC)[3] network. The CPC network brings together authorities responsible for enforcing consumer protection laws in the EU. Member States were also required to empower competent bodies and lay down measures to ensure adequate and effective enforcement of the Regulation, so that action can be taken against traders who infringe the rules.

In general, the implementation process by the Member States has been held back by delays. By December 2018, only six Member States had adopted and notified the measures and bodies designated for the enforcement of the Regulation. Following close monitoring and scrutiny activities by the Commission, most Member States adopted these measures during the spring of 2019. By July 2019, six Member States had still not communicated fully or partially the enforcement measures applicable for infringement of the Regulation. The Commission launched infringement proceedings in these cases.

The rights and obligations in the Regulation apply directly, and have not been affected by these delays. However, in the first quarter of 2019, no public enforcement or supervision was available in most Member States[4].

Among those Member States who designated the relevant bodies, most chose to empower consumer-protection authorities as enforcement bodies, and European consumer centres as assistance bodies[5]. However, there are large variations in applicable fines across Member States and often there is a large range between min and max fines within a Member State[6]. On business-to-business cases of geo-blocking, Member States are almost equally divided in following one of two different approaches: either only private enforcement through courts; or a combination of private and public enforcement. The effectiveness of the sanctioning and enforcement systems, in particular for business-to-business cases, will therefore need to be

[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. This new CPC Regulation applies from 17 January 2020.

[4] At the date of adoption of this report, one Member State has not yet adopted all necessary measures, although it informally cooperates within the CPC network with other enforcement authorities.

[5] https://ec.europa.eu/digital-single-market/en/geo-blocking-digital-single-market#Implementation

[6] From a few hundreds of euro to fines above EUR 100 000 and/or fines linked to turnover. See accompanying SWD, sec. 2.1.2.

assessed further, including to evaluate the practical application and effectiveness of the judicial' remedies.

2.2. Consumer awareness and expectations

As one of the main e-commerce-related initiatives of the digital-single-market strategy, the Regulation attracted significant attention from consumers and their representative organisations. One of the reasons for this is that the Regulation directly empowers consumers with specific rights vis-à-vis cross-border traders.

The Commission also carried out awareness-raising activities through various channels, well before the Regulation became applicable. One of these actions was the creation of question-and-answer documents to clarify questions for both consumers and traders[7].

As a result, in February 2019, just a couple of months after its application date, roughly 50% of EU consumers were already aware of the Regulation. Approximately half of those aware also considered themselves to be sufficiently informed about what it involved[8].

Nevertheless, the first months of implementation by national enforcement and assistance bodies showed that, when it comes to disputes and problems, consumers have often greater expectations about the rights and obligations at stake[9]. These expectations were especially high for the denial of cross-border delivery, or the absence of delivery options for certain countries, especially by multinational traders. Obligations in these areas were not provided for in the Regulation. The Commission proposes to continue to raise awareness of the Regulation, while continuing to monitor the overall marketing practices of traders and the impact of these practices on the choices available to the public across the EU.

2.3. Application by traders

In the first months of application of the Regulation, the Commission monitored traders' marketing practices through a 'mystery shopping' survey, and by means of feedback from enforcement and assistance bodies.

In a mystery-shopping survey[10], many attempts to buy goods and services across borders are carried out with a view to collecting data on practical restrictions. A typical survey looks at the customer experience when shopping across borders in different stages of the shopping process. A baseline survey in 2015 formed the basis of the impact assessment of the original proposal for the Regulation[11].

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[7] Available at https://ec.europa.eu/digital-single-market/en/news/geo-blocking-regulation-questions-and-answers.
[8] Flash Eurobarometer 477b (2019).
[9] See ECC network position paper, available at https://www.ecc.fi/globalassets/ecc/ajankohtaista/raportit/2019-geoblocking-position-paper-en.pdf, and accompanying SWD, sec. 2.1.3.
[10] Ipsos et al (2020).
[11] GfK (2015), available at https://ec.europa.eu/info/sites/info/files/geoblocking-final-report_en.pdf

The 2019 survey, covering about 9 000 websites, showed some initial positive effects of the Regulation in improving the cross-border accessibility of traders' websites[12]. Compared to 2015, rerouting or denial of access to e-commerce websites had decreased[13], while restrictions fully preventing registration on websites halved[14]. Automatic changes to prices upon registration have also decreased. Overall, the success rate in completing a cross-border purchase slightly increased compared to 2015[15].

However, more than 1 in 10 cross-border mystery-shopping attempts failed at the registration stage, and a similar number failed at the payment stage. This was usually due to residence or payment-location requirements (e.g. only accepting locally issued debit cards)[16]. There is a continued need to tackle these obstacles, which may: (i) have a discriminatory character; (ii) lead to biased results, and/or (iii) prevent access to and comparison of offers. This needs to be tackled through fully operational enforcement and assistance bodies in all Member States.

The initial experience of those bodies that have been empowered to resolve geo-blocking issues confirms this data[17]. Often 'amicable' intervention by national authorities and/or assistance bodies with the trader can address the problems encountered. This shows that a number of traders are not necessarily aware of their obligations, or did not sufficiently prepare to adjust their marketing policies for cross-border customers by the time the Regulation became applicable, but were willing to adapt once contacted.

These results also support the need for further guidance on implementation and additional awareness campaigns to promote compliance by traders. Initial information gathered from the national bodies also shows the benefit of cooperation between authorities within the CPC network. This cooperation facilitates cross-border enforcement but also ensures the consistent interpretation of the rules with the support of the Commission.

The Regulation does not oblige traders to deliver across borders where this is not provided in the applicable terms and conditions[18]. However, often the shopping process is stopped at the last stages because the trader does not deliver to the shopper's country, so that when cross-border delivery is requested, only 1 in 3 cross-border shopping attempts was successful in the recent mystery-shopping exercise[19].

[12] SWD sec. 2.2 based on Ipsos et al (2020).
[13] Although already low generally, Ipsos et al (2020).
[14] Even when issues were encountered, failure to register dropped significantly (by 13 pp), Ipsos et al (2020).
[15] SWD sec. 2.3. It is important to note that this overall indicator also includes elements not directly addressed by the Regulation (such as cross-border delivery), which slightly deteriorated, thus negatively affecting the overall success rate.
[16] Ipsos et al (2020).
[17] SWD, sec. 2.1.3 and results of the surveys with national bodies reported therein.
[18] If the trader under his general conditions already provides for cross-border delivery in the country of the customer, on the other hand, there should be no discrimination of that customer.
[19] Ipsos et al (2020). This is consistent with the general Eurostat figures about the number of enterprises actively engaging in cross-border sales, which remained stable in 2019 compared to 2017. Only a minority of enterprises sell across borders, even in the online sector (43% of companies operating online sell across borders, compared to 9% of all enterprises).

This is mainly due to the persistence of delivery limitations in cross-border shopping. Such restrictions still affect more than 50% of shopping attempts[20], even with multinational traders who offer different national versions of their websites.

Although not directly addressed by the Regulation at this stage, such problems potentially frustrate the expectations of consumers that offers be accessible across the European single market. On the other hand online traders still encounter administrative obstacles (such as VAT-registration requirements), and are unclear about the consumer-protection requirements that apply to cross-border sales. These issues may therefore deter traders from more active cross-border engagement[21] .

These insights suggest that a holistic approach is needed to achieve the full intended effects of the Regulation. Such an approach would promote greater cross-border access for consumers, while simultaneously facilitating the cross-border engagement of traders. The next section will elaborate on these issues.

2.4. Synergies with the broader framework of the digital single market

The digital-single-market measures help traders to sell goods and provide services more easily across borders[22] by reducing the complexity and costs, especially for SMEs.

This includes measures that: (i) reduce the administrative costs of compliance with VAT requirements for cross-border sales of goods, in particular eliminating the need for registration for businesses making distance sales of goods or supplying services to non-taxable persons in Member States where they are not established (applicable as of July 2021); (ii) further harmonise consumer-protection rules, including for remedies for defective goods (as of 2022); (iii) strengthen consumer enforcement cooperation (as of January 2020); and (iv) improve both the regulatory oversight of cross-border parcel-delivery services and the transparency of parcel-delivery tariffs (as of May 2018)[23]. The Commission is committed to identifying and tackling any further cross-border barriers[24].

[20] SWD, sec. 2.2.4.1 and Ipsos et al (2020). This figure of 50% includes also cases where the problems with delivery incurred during registration (delivery address not accepted in the registration phase) were reported.

[21] These are the second- and third-most prominent obstacles for retailers respectively (after debt recovery) and still affect a large share of businesses (60% of businesses cite VAT procedures as an obstacle to selling across borders), Commission Staff Working Document: Business Journey on the Single Market: Practical Obstacles and Barriers SWD(2020) 54 final.

[22] In addition to the DSM measures, an overall review of the Vertical Block Exemption Regulation due in 2022 is also ongoing. This review will partly focus on 'vertical' contractual obstacles imposed on traders, affecting the cross-border provision of services and goods.

[23] See Council Directive (EU) 2019/1995 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods, as well as the related Council Implementing Regulation (EU) 2019/2026 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods and Commission Implementing Regulation (EU) 2020/194 laying down details on the working of the VAT One Stop Shop; 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; Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019

The full and effective implementation of the above measures will have an impact on the effects of the Regulation, as they give greater legal certainty to traders, and remedy some of the obstacles making traders reluctant to engage with consumers across borders. Consequently, the effectiveness of the Regulation, and the need for any possible adjustments, will be easier to assess in the light of broader market circumstances once other measures adopted under the digital-single-market strategy have been fully implemented and started to have an effect.

In the meantime, even within the evolving regulatory framework, the potential discriminatory effects of certain traders' practices not directly addressed by the Regulation may still be subject to case-by-case scrutiny, pursuant to the general non-discrimination clause of the Services Directive[25], such as deliberately limiting delivery options for certain products or websites in countries otherwise served by the trader without any objective justification. Further guidance on this clause and its links with the Regulation may therefore be needed.

3. EXTENSION OF THE SCOPE OF THE REGULATION

3.1. Electronically supplied services giving access to copyright-protected content

For services that provide access to copyright-protected works[26] (such as services providing access to music, video games, or films), the review clause of the Regulation specified some particular aspects to be taken into account. In particular, the Regulation provides that the assessment of any scope-extension should require that a trader making any such works accessible across borders must hold 'the requisite rights in the relevant territories'. This implies that consumers may access online content services in other Member States only if the service provider holds the rights for their territories. This approach is broadly consistent with the intervention logic of the Regulation, and leaves copyright law unaffected. However, it does not address the question as to what the 'requisite rights' are, in particular when a trader responds to unsolicited requests from customers located in other Member States (known as a 'passive sales'). This is an important issue, as the actual effects of an extension of the scope of the Geo-blocking Regulation would depend on the licensing practices and possible interpretations of the 'requisite rights'.

This report identifies some trends, opportunities and challenges that would result from an extension of the scope of the Regulation to these services, including audiovisual and non-audiovisual content, assessed on the basis of the indications of the review clause, including

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

[24] Identifying and addressing barriers to the Single Market COM(2020)93 final.

[25] Earlier Commission guidance on the application of Article 20(2) dates back to 2012 (SWD(2012)146) before the DSM measures and the Regulation.

[26] Audiovisual services are fully excluded from the scope of the Regulation. Non-audiovisual content services whose main feature is giving access to or use of copyright protected works (such as e-books, online music, software and video games) are subject to the Regulation, except its Article 4.

the 'requisite rights' condition. It relies on different analytical studies and data sources further analysed in the accompanying staff working document[27]. It analyses: (i) consumers' expectations/demands; (ii) possible variety and price effects for consumers; and (iii) impacts on different sectors. It also takes into account regulatory and licensing frameworks, and dynamic effects, all of which are particularly important for complex and rapidly evolving creative industries. At the same time, given that the available evidence refers to the period prior to the break-out of the COVID-19 crisis, the analysis could not reflect the impact of this crisis on copyright content industries.

Music

Data show that consumers' expectations for – and interest in – cross-border access to music content has increased, even though domestic consumption remains mostly dominant in the EU[28]. Subscription-based business models now represent 85% of revenues[29] in the music sector. A number of pan-EU providers, along with a few national providers, are active in all Member States, offering large catalogues. Pan-EU providers in particular have large catalogues with more than 90% overlap across different Member States[30]. In other words, there are no substantial differences in the variety of repertoire available across Member States. Existing geo-blocking practices in the sector are therefore mainly meant to implement price differentiation strategies across different Member States, and follow a consistent pattern on the basis of factors such as different demand and purchasing power[31].

The available data indicate that price seems to be the main driver of consumer switching across services. If the Regulation was extended, existing price differentiation strategies would therefore be less sustainable, and large-scale migration towards cheaper versions of the same service supplied in other Member States could potentially have a significant impact on the revenues of music-streaming services. Providers are likely to respond by harmonising prices and, possibly, through differentiation of services actively offered in different countries[32].

Based on the available data, the overall dynamic-welfare effects (on both businesses and consumers) of increasing price harmonisation appear ambiguous at this point. Any possible decrease of prices in high-demand countries (and increase in consumption in those countries) may be more than compensated for by increases of prices and reduction of consumption in low-demand countries[33]. These conclusions appear to be further supported by additional evidence about structural gaps between countries across the Union in relation to the sector

[27] Including the Eurobarometer Flash survey (EB477b (2019)), as well as the 'Study on the impacts of the extension of the scope of the Geo-blocking Regulation to audiovisual and non-audiovisual services giving access to copyright protected content' prepared by VVA et al. (2020), further input from the JRC and studies carried out by different stakeholders. The specific sources are specified further in the SWD sections referred to.
[28] Flash Eurobarometer 477b (2019) shows that, on average, 8% of internet users in the EU have tried to access online music services across borders, and 29% of those who have not tried this would be interested to do so.
[29] SWD sec. 3.1.2.1.
[30] SWD sec. 3.1.2.2., based on VVA et al (2020), JRC (2017).
[31] SWD sec. 3.1.2.2., based on VVA et al (2020).
[32] SWD sec. 3.1.2.4, based on VVA et al (2020), NERA (2019), Waldfogel, 2018.
[33] SWD sec. 3.1.2.4, based on VVA et al (2020), NERA (2019), Waldfogel, 2018.

development, which have implications on the export and consumption of music across borders.[34]

E-books

Demand for cross-border access to e-books appears low compared to other content services[35]. The market structure shows a mix of a few pan-EU platforms alongside many smaller national and regional booksellers/distributors, who frequently offer e-books as a complement to their physical sales, despite more limited demand and lower margins.

An extension of the Regulation to e-books could potentially lead to a significant increase in accessible items from individual catalogues across borders for a given providers in specific countries (e.g. up to a 40% increase in few countries for the iTunes catalogue) and increased access to smaller/national booksellers[36]. However, it is not clear whether this would actually increase the effective variety of individual titles already available to consumers through different providers/versions of pan-EU and national bookstores.

Consumer demand in this sector is characterised by relatively high sensitivity towards language, and relatively low price sensitivity vis à vis foreign services[37]. Combined with the more limited effects of price differences in this sector and the non-exclusivity of catalogues (already available at national level through different providers), this supports the finding that extending the Regulation could have positive, although probably limited, effects for consumers, mostly due to limited price reductions[38]. In addition, some national markets have legislation that sets book prices, which could further limit these effects while increasing compliance costs.

However, given the structure of the industry, the negative effects (through greater price competition, but above all through greater compliance costs) are likely to be particularly detrimental for smaller booksellers. These would be felt through much smaller market shares and margins from sales of e-books, but higher relative operating and compliance costs for cross-border sales[39].

Games/software

Demand for cross-border access to games and, above all, software appears low according to current data[40], in particular compared to other content services.

Cross-border availability of video games (i.e., PC, mobile and console games), at least through major pan-EU providers such as app stores or PC/console platforms, differs across

[34] SWD sec. 3.1.2.4, based on the study report "A European music export strategy" (2019)
[35] Flash EB 477b (2019).
[36] SWD sec. 3.1.3.2 based on VVA et al (2020).
[37] SWD sec. 3.1.3.3., based on VVA et al (2020).
[38] SWD sec. 3.1.3.4., based on VVA et al (2020).
[39] SWD sec. 3.1.3.4 based on VVA et al (2020).
[40] Flash EB 477b (2019).

different online gaming ecosystems. As is the case for e-books, national gaming catalogues slightly differ across the EU, in particular for console games and for some Member States. As it is for music, distribution practices for video games are largely based on non-territorial and non-exclusive licensing, contrary to other content services[41]. Removing cross-border access restrictions has the potential to increase the variety of accessible items in individual catalogues (up to approximately 17% for Playstation, weighted for the items' ranking). However, for all platforms availability gaps mainly affect titles with relatively low demand/rating[42].

Although price differences across Member States appear small on average, the evidence indicates that extending the Regulation to video games could bring some positive impacts for consumers, in particular through lower prices and increased sales[43]. For providers, however, it does not seem that the potential increase in consumption would fully make up for the reduction in prices. A possible reduction in revenues for developers/publishers may therefore be expected. The overall welfare effects (bringing together consumer and provider effects) of extension could be slightly positive, at least in the short term[44].

However, the possible negative effect could be greater for smaller and/or national distributors active in distributing PC games, where pan-EU platforms operate alongside direct sales by publishers) that have a smaller market position but higher relative operating costs for cross-border sales[45]. The potential impacts on some games-specific national-transparency requirements (such as age ratings) would also need to be considered.

Audiovisual (AV) services

Domestic consumption remains prevalent for audiovisual services, but demand for cross-border access to audiovisual services appears to be highest among copyright-protected content service. Evidence also indicates that this demand is increasing, even if it is still rather limited 9% of internet users have tried to get access to audiovisual content across borders, and 31% are interested in such access[46].

But in spite of this potential cross-border demand, the availability of audiovisual content online (in particular films and series) across the EU remains very limited (on average 14.1% in the EU-27[47]). Catalogues are fragmented in terms of titles available, and often in terms of language versions, with consumers in smaller countries generally having access to less content. This situation is partly the result of distribution practices that are largely based on

[41] SWD sec. 3.1.4.1. based on VVA et al (2020).
[42] SWD sec. 3.1.4.2 based on VVA et al (2020).
[43] SWD sec. 3.1.4.4 based on VVA et al (2020).
[44] SWD sec. 3.1.4.4 based on VVA et al (2020).
[45] SWD sec. 3.1.4.4 based on VVA et al (2020).
[46] Flash Eurobarometer 477b (2019), compared to 5% and 29% respectively in 2015.
[47] SWD sec. 3.1.5.2 based on JRC (2020).

territorial and exclusive licensing in the audiovisual sector to raise production financing[48]. However, it may also be due to commercial practices segmenting the single market along national borders[49]. The cross-border availability of audiovisual content is very low for catalogues of national service providers, which remain largely unavailable in other Member States[50]. Even large, mostly US-based, pan-EU providers offer different catalogues in different Member States, although their own productions are more easily available across Member States[51].

In recent years, the EU has facilitated access to audiovisual content across borders by addressing certain copyright-related obstacles to the distribution of content. For example, the Portability Regulation[52] allows consumers to continue accessing their paid-for subscription service when travelling in the EU. The Online Television and Radio Programmes Directive will facilitate the cross-border accessibility of certain television programmes on broadcasters' online services[53]. On the other hand, given that the Geo-blocking Regulation does not affect copyright law per se, the effects of extension of its scope to the audiovisual sector may depend on licensing practices[54].

In particular, industry licensing practices generally assume that 'having requisite rights' implies that content distributors must have the rights for the different countries where the content is made available, and that this would also apply for 'passive sales' (i.e. where the service is not actively promoted in the territory of the consumer). Therefore, in this situation, there would be very limited impacts on the accessibility of new online audiovisual services across borders if the Regulation were to be extended. This is because producers would continue to limit the scope of the licensed rights[55], and could be even incentivised to do so to prevent the Regulation being applied to the licensed distributors. In this context, extending the Regulation to the audiovisual sector means that consumers would mainly switch for price reasons (i.e. looking for cheaper offers of content/services that they already have access to), and mostly within different versions of pan-EU providers. In the short term, this might lead to slightly positive overall welfare effects thanks to possible price arbitrage by consumers[56], without however excluding some harmonisation of prices adopted by providers as possible mitigation strategy. At the same time, the possible loss of revenues by the industry might trigger a potentially negative dynamic in the creation, financing, production and distribution markets in the mid-long term with related welfare impacts also in relation to cultural diversity[57].

[48] Commission Staff Working Document accompanying the Report from the Commission to the Council and the European Parliament on the E-commerce Sector Inquiry, SWD(2017)154.
[49] Case AT.40023 – Cross-border access to pay-tv.
[50] Between 7% and 3%, SWD sec. 3.1.5.2 based on JRC (2020).
[51] SWD sec. 3.1.5.2 based on JRC (2020).
[52] Regulation (EU) 2017/1128.
[53] Member States need to transpose Directive (EU) 2019/789 by 7 June 2021.
[54] See SWD sec. 3.1.1 and 3.1.5.1.
[55] See DG COMP sector enquiry (2017) on the scope of licensed rights in AV sector.
[56] SWD sec. 3.1.5.4 based on VVA et al (2020).
[57] SWD sec. 3.1.5.4., based on VVA et al (2020) and Oxera (2016).

However, the current case-law on this interpretation of copyright legislation is not conclusive, and some issues are still pending before the CJEU[58]. If distributors did not need additional licences for responding to unsolicited requests from individual consumers from outside territories where they are actively providing the service, this would have implications for the impact analysis. In this case, cross-border demand triggered by extending the Regulation would also be driven by consumers looking for new content or language versions not available in their Member State, not necessarily at a cheaper price. In this scenario, under the assumptions of the study, it could be that overall revenues for online service providers (at least the largest ones) could actually increase, because local content would find new audiences across borders[59]. While this market expansion could potentially lead to positive overall welfare effects, the impacts of such an expansion on the structure of the industry, on the different market players, and on the different Member States are much more difficult to predict[60] and further assessment is needed. For example, uncertainty remains about the impact of the characteristics of the licences. On the one hand, extending the Regulation could trigger growth in pan-EU exclusive licensing[61], with possible effects on the structure of the concerned markets. But on the other hand, it could also incentivise licensing practices focusing on the linguistic and cultural differences of the demand, while allowing spill-over in different territories[62].

Overall, in a broader analysis of the sector it is important to take into account that the industry is rapidly changing. In economic terms, this means that both short and long term effects need to be considered, e.g. when assessing investments incentives, with different business models and distribution value chains playing a crucial role in content financing and distribution.. For example, streaming subscriptions are expected to continue growing steadily in the future[63], with an increasing number of global and national platforms, investing heavily in local content and distributing it across borders, including through partnership agreements.

Other sectors

The Commission has examined other sectors not covered by the Regulation, with a view to assessing possible unjustified restrictions (applied by traders) which could be tackled through the Regulation.

On transport, the non-discrimination principle is already embedded in existing sector-specific EU legislation, or the passenger rights legislation currently being negotiated for railways. Results from the 2019 mystery-shopping survey suggest that geo-blocking practices in different transport sectors (airlines, bus, train and maritime) are mostly rare, although they are slightly more prevalent in the rail and maritime sectors[64]. This suggests there is a need to

[58] Case C-132/19 *Groupe Canal + v Commission*.
[59] SWD sec. 3.1.5.4 based on VVA et al (2020).
[60] SWD sec. 3.1.5.4. and sources reported therein.
[61] SWD sec. 3.1.5.4, for example O&O (2020) models this effect for a significant range of sport events.
[62] SWD sec. 3.1.5.4 Hugenholtz-Poort (2019).
[63] Up to 20% of the paid services in 2023, estimation in VVA et al (2020).
[64] SWD sec. 3.2., based on Ipsos et al (2020).

ensure that the non-discrimination clause proposed in the recast Rail Passenger Rights Regulation is quickly approved by the co-legislators. More broadly however, there does not appear to be a need to include transport services in the Regulation at this stage. This is because of: (i) the overall rarity of geo-blocking in the transport sector; (ii) the existence of specific non-discrimination clauses in other sectoral transport instruments (air, maritime, bus and coach); (iii) an upcoming legislative initiative for railways and (iv) the possible impact of public service obligations applied in the Member States.

Financial services, telecoms, and health services all present specific features that must be taken into account when considering how to tackle possible unjustified barriers to cross-border access of these services[65]. For example cross-border provision may trigger sector specific supervisory requirements or may be subject to some safeguards and additional checks that are required or allowed by sector-specific legislation, so that a blanket extension of a horizontal instrument such as the Regulation does not appear warranted.

4. FOLLOW-UP ACTIONS BY THE COMMISSION

At this stage, the preliminary view of the Commission is that it is too soon to assess all the direct and indirect effects of the implementation of the current Regulation and identify amendments in this regard. Despite the slow implementation, the initial positive effects reported here indicate that there is near-term potential for better results over time, notably through better enforcement in Member States. Moreover, any possible synergies with other measures of the digital single market in enhancing customer access to offers should be monitored in the next 12-18 months.

As far as any extension of the Regulation to electronically supplied services providing access to copyright-protected content is concerned, further assessment and consideration is also needed. The analysis shows that geo-blocking in these sectors is driven by different factors and market dynamics, and that extension of the Regulation might possibly have different effects in different areas. Any beneficial effects, in particular for consumers, largely depend on copyright-licensing practices and approaches, which deserve further analysis. This is particularly the case for the audiovisual sector, where there may indeed be potential relevant improvements in terms of availability of content. This supports the need to look at the issue of consumers' access to content, in particular audiovisual content, in the broader context of accompanying the industry in its recovery and transformation in the Commission's future media and audiovisual action plan. The Commission will engage with stakeholders in a dialogue to identify how to foster better circulation of audiovisual content across the EU, while proposing actions to support the industry's recovery[66]. The Commission will also

[65] Such as specific rules on non-discrimination for electronic communications services, allowing for fair-use policies of roaming services, EU rules on access to basic payment accounts, or patients' non-discrimination rights for health services, see SWD sec. 3.2.-3.5.

[66] For instance for the AV sector the COVID crisis had immediate effects and is likely to have also deferred, more profound effects, as noted by the European Audiovisual Observatory, which started to track supporting measures in this regard, see https://rm.coe.int/the-european-audiovisual-industry-in-the-time-of-covid-19/16809ec9cb. For the immediate effects the Commission intervened with a temporary framework for state aid that has allowed Member States to adopt a number of support measures and sector specific measures in the

pursue its efforts to support the sustainability of other sectors, such as the music sector in the framework of the dedicated initiative "Music Moves Europe", based on an integrated approach of European support to the sector[67].

In the meantime, eliminating existing barriers and ending discrimination against customers remains a priority of the Commission. The following immediate follow-up actions are proposed.

- Firstly, it is important to ensure that the full potential of the current Regulation is realised. This requires: (i) full implementation by Member States; (ii) greater cooperation among competent authorities and the Commission within the new CPC network; (iii) further guidance on the application of the Regulation and on its relationship with the broader non-discrimination framework of the Services Directive.
- Secondly, there is a need for continued awareness-raising activities among traders and consumers about their obligations and rights. The Commission should be involved in these activities, alongside stakeholders and competent authorities.
- Thirdly, the Commission will continue to monitor market developments on customers' access to offers in the single market, also in view of the forthcoming implementation of other e-commerce measures of the digital-single-market strategy.
- Finally, the Commission will gather feedback from stakeholders on the conclusions of this first short-term report and the underpinning findings and evidence (including on the availability of copyright-protected content). Stakeholders could also provide relevant feedback on the short- and medium-term effects of the COVID-19 crisis that could not be taken into account in this report.

The Commission will continue to monitor the impact of the regulation on the basis of evidence collected and feedback from stakeholders, as well as implementation of DSM measures, and aims at taking stock before end of 2022 on progress in further reducing cross-border barriers,. It will specifically assess the progress achieved on the availability of audiovisual content following the dialogue with industry. The outcome of this monitoring will determine whether the Commission will then consider proposing amendments to the Regulation or any other follow-up measures, including appropriate legislative intervention.

frame of the Creative Europe programme i.e. flexibility introduced in the MEDIA actions and an adaptation of the cultural and Creative sectors guarantee facility allowing for more flexibility with repayment of loans and encouraging financial institutions to lend more money to cultural and creative sectors. Further, the Commission adopted an unprecedented recovery plan for Europe to repair and prepare for the next generation, recognizing that the cultural and creative industries, including audiovisual and media, form an important industrial ecosystem.

[67] See the measures referred to in SWD sec. 3.1.2.4, taking into account also the post-COVID-19 landscape.