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# Implementation of the 2018 Geo-blocking Regulation in the digital single market

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European  
implementation  
assessment

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## IN-DEPTH ANALYSIS

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This paper has been produced by the Ex-post Evaluation Unit of the Directorate for Impact Assessment and Foresight within the European Parliamentary Research Service (EPRS) of the Secretariat of the European Parliament. Its aim is to assist the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) in the context of its work to establish the extent to which the implementation of the Geo-blocking Regulation has contributed to the integration of the internal market and thereby to better deals for consumers and more opportunities for businesses.

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## Executive summary

More than 3 years after the entry into application of the Geo-blocking Regulation (GBR), the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) decided to draft a report to establish to what extent the implementation of the GBR had contributed to the integration of the internal market and thereby to better deals for consumers and more opportunities for business. The present European implementation assessment (EIA) seeks to assist the IMCO committee in its drafting process.

This EIA provides an overview of the publicly available information on the implementation and enforcement of the GBR. The GBR aims to contribute to the proper functioning of the internal market by preventing direct and indirect discrimination based on customers' nationality, place of residence or place of establishment, including unjustified geo-blocking, in cross-border transactions with traders within the European Union (EU).

The regulation ensures that customers in the EU have access to online interfaces, goods and services, and that they are not discriminated against on the basis of their means of payment. The regulation also prohibits restrictions on passive sales, i.e. when a trader receives unsolicited requests from customers located in a territory in which the trader is not active. At the same time, traders are not obliged to deliver cross-border unless their general conditions already provide for cross-border delivery in the country of the customer.

In 2020, less than 2 years after the entry into application of the regulation, the Commission published a report on the implementation and potential extension of the regulation. While this report cannot be considered a fully-fledged ex-post evaluation of the regulation, it gives some useful insights into the first practical contact with the regulation and its potential extension to copyright-protected online content, as summarised in the subsequent sections of the present paper.

The present EIA also reviews information provided by the national enforcement and consumer protection bodies, such as their own assessments of the implementation of the regulation, in which they describe the issues that consumers and traders face when buying or selling cross-border online. To shed light on different points of view held within the European Parliament and other EU bodies, the EIA also summarises information on parliamentary questions, debates and opinions.

Following the publication of its report in 2020, the Commission carried out a stakeholder dialogue on access to and availability of audio-visual content across the EU. It furthermore announced that it would evaluate progress towards the goals of the regulation at the end of 2022 and decide on further action. In this exercise, the Commission will have the opportunity to take into consideration the effects of the coronavirus pandemic on consumer and trader behaviour in cross-border e-commerce.

## Table of frequently used abbreviations and acronyms

Commission	European Commission
CPC	consumer protection cooperation network
DG	directorate-general
EC	European Commission
ECA	European Court of Auditors
ECC	European consumer centres network
EESC	European Economic and Social Committee
EIA	European implementation assessment
EP	European Parliament
EPRS	European Parliamentary Research Service
EST	electronic-sell-through
EU	European Union
EUR	euro
GBR	Geo-blocking Regulation
IMCO	Committee on the Internal Market and Consumer Protection
JRC	Joint Research Centre
SVoD	subscription video-on-demand
TSCs	territorial supply constraints
TVoD	transactional video-on-demand
VoD	video-on-demand

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# 1. Introduction

## 1.1. Background information

With its 2015 [digital single market strategy for Europe](#), the European Commission sought to remove barriers, unlock online opportunities and promote the establishment of a true single market to allow EU customers to purchase goods and services cross-border. Among the various initiatives announced in the strategy was a legislative proposal to end unjustified geo-blocking, i.e. discrimination in the form of restrictions based on nationality, residence or geographical location that run counter to the basic principles of the EU. This was mainly in response to consumer complaints about price differences or other forms of geographical discrimination faced in relation to online cross-border purchases. In fact, a 2015 Commission mystery shopping [survey](#) revealed that only 37 % of websites allowed customers from another Member State to reach the last shopping stage, that is, the point just before pushing the order confirmation button.<sup>1</sup>

According to the Commission, restrictions on customers' cross-border access to goods and services may be justified in some cases, for instance, where divergent legal environments or taxation issues are making it difficult for traders to comply with all applicable rules. In other cases, the Commission considered some restrictions to be unjustified geo-blocking practices leading to fragmentation of the internal market. Against this backdrop, the Commission adopted on 25 May 2016 a [legislative proposal](#) on unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market, as part of a broader [e-commerce package](#). This package also included a [proposal for a regulation on cross-border parcel delivery services](#) and a [proposal for a revision of the Consumer Protection Cooperation Regulation](#). On the same day, the Commission also adopted a [proposal for a revised directive on audio-visual media services](#).

On 20 November 2017, negotiations between the co-legislators – the European Parliament and the Council of the EU – under the ordinary legislative procedure ended with an agreement on the final text of the legislative proposal. Consequently, the [Geo-blocking Regulation](#) (GBR) was adopted on 28 February 2018 and entered into application on 3 December 2018. During the negotiations, one contentious point had been the exclusion of audio-visual services from the GBR. At the Parliament's request, negotiators agreed to include a review clause requiring the Commission to assess, within 2 years after the entry into force of the regulation, whether to extend the scope of the regulation, in particular to digital copyrighted content and audio-visual services.<sup>2</sup>

## 1.2. Content of the Geo-blocking Regulation

The main objective of the GBR is to prevent direct and indirect discrimination based on customers' nationality, place of residence or place of establishment, including unjustified geo-blocking, in cross-border transactions with traders within the European Union. The GBR therefore aims to

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<sup>1</sup> European Commission, [Mystery shopping survey on territorial restrictions and geo-blocking in the European Digital Single Market](#), May 2016. In this report, the term mystery shopping is defined as 'the use of (anonymous) resources to perform evaluations of services and transactions. It involves the use of mystery shoppers (also called assessors) who are trained and/or briefed to observe, experience, and measure a customer service process by acting as a prospective customer and by undertaking a series of pre-determined assignments to assess performance against specific criteria, reporting back on their experience in a comparable, consistent and objective way.'

<sup>2</sup> T. Madiega, [Geo-blocking and discrimination among customers in the EU](#), EPRS, European Parliament, 2018.

contribute to the proper functioning of the internal market. The bottom line is that customers should be able to 'shop like a local' throughout the EU.<sup>3</sup>

The **main provisions** of the GBR focus on:

- **access to online interfaces (Article 3).** The GBR bans blocking access to websites and redirecting without the customer's prior consent. Even if the customer gives consent to the redirection, the original version visited must remain accessible and the customer has the right to withdraw such consent at any point in time. When blocking, limiting access or redirecting are justified by EU law, or by national law in accordance with EU law, traders must provide a clear and specific explanation to customers;
- **access to goods or services (Article 4).** Traders are not allowed to apply different general conditions of access to goods or services, for reasons related to a customer's nationality, place of residence or place of establishment, in case the customers seek to purchase either i) goods delivered to an area served by the trader; or ii) electronically supplied services; or iii) services provided in a physical location within the territory of a Member State where the trader operates;
- **non-discrimination for reasons related to payment (Article 5).** Traders can decide on the range of means of payment they will accept, but may not apply different conditions for a payment transaction for reasons related to a customer's nationality, place of residence or place of establishment, the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the EU, where:
  - the payment transaction is made through an electronic transaction by credit transfer, direct debit or a card-based payment instrument within the same payment brand and category;
  - authentication requirements are fulfilled pursuant to the Payment Services Directive (EU) 2015/2366; and
  - the payment transactions are in a currency that the trader accepts.
- **passive sales and EU competition law (Article 6).** A trader should be free to respond to unsolicited requests from customers located in a territory in which the trader is not active (known as passive sales). Restrictive agreements with a supplier requiring a trader to treat customers from other EU countries differently for such sales, in a manner prohibited by the GBR, are not allowed and must be disregarded;
- **enforcement (Article 7).** To ensure compliance with the GBR, Member States have to designate one or more bodies responsible for adequate and effective enforcement of the regulation;
- **assistance to consumers (Article 8).** Member States have to designate a body or bodies responsible for providing practical assistance to consumers in the event of a dispute with a trader arising from the application of the GBR.

The regulation does **not oblige traders to deliver cross-border**, unless their general conditions already provide for cross-border delivery in the customer's country.

The GBR applies exclusively to cross-border sales activities within the 27 EU Member States (plus Norway, Iceland and Liechtenstein), but also to all traders offering goods and services to consumers in the EU, regardless of whether the trader is established in or outside the EU. It **excludes** certain services, namely those stated in Article 2(2) of the Services Directive ([2006/123/EC](#)) and excluded from the said directive itself, e.g.:

<sup>3</sup> Under the GBR, customers are either consumers who hold citizenship of an EU country, have their place of residence in an EU country, or are end-use undertakings if they are based in an EU country and receive a service solely for end use or purchase goods for end use.

- services in the field of transport;
- financial services/retail financial services;
- healthcare services;
- audio-visual services.

The GBR also amended the Regulation on Consumer Protection Cooperation ([\(EC\) 2006/2004](#))<sup>4</sup> and the Injunction Directive ([2009/22/EC](#)) (which ensures that injunctions are effective enough to terminate infringements that are harmful to the collective interests of consumers); the latter was amended to include a reference to the GBR in its Annex I.<sup>5</sup>

Although not directly mentioned in the GBR, the [Portability Regulation](#) (EU) 2017/1128), applicable since 1 April 2018, is an important element in the context of cross-border access to online content. The provisions of this regulation allow individuals who have subscribed to an online content service in their own EU country (e.g. video-on-demand, online TV, music streaming or online game marketplaces) to access their paid subscriptions when temporarily staying in other EU countries. Subscribers should have access to the same content, on the same range and number of devices, for the same number of users, with the same functionality and with no extra charges.

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<sup>4</sup> In the meantime, this version of the Consumer Protection Cooperation Regulation has been repealed and replaced by the new Consumer Protection Cooperation Regulation ([\(EU\) 2017/2394](#)), applicable since 17 January 2020. For further details, see the Section on the 'Consumer protection cooperation network'.

<sup>5</sup> The Injunction Directive will be repealed and replaced by Directive (EU) [2020/1828](#) on representative actions for the protection of the collective interests of consumers as of 25 June 2023.

## 2. Implementation of the Geo-blocking Regulation

More than 3 years after the entry into application of the GBR and more than 2 years after the publication of the [Commission report](#) on the first short-term review of the Geo-blocking Regulation, the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) decided to draft a report to establish to what extent the implementation of the GBR had contributed to the integration of the internal market and thereby to better deals for consumers and more opportunities for business.

The present EIA seeks to assist the IMCO committee in its drafting process, by synthesising available information on the implementation and enforcement of the GBR. In the sections below it therefore presents relevant material such as reports, opinions of EU institutions and bodies, and stakeholders.

### 2.1. Commission report on the first short-term review of the Geo-blocking Regulation

Pursuant to the review clause (Article 9) of the GBR, the Commission had to report on the evaluation of the GBR by 23 March 2020 and every 5 years thereafter, taking into account 'the overall impact of the Regulation on the internal market and cross-border e-commerce, including, in particular, the potential additional administrative and financial burden for traders stemming from the existence of different applicable regulatory consumer contract law regimes. That report shall, where necessary, be accompanied by a proposal for an amendment of this Regulation, in light of legal, technical and economic developments.'

In addition, the review clause of the GBR required the Commission to assess a potential widening of the scope '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'.

The Commission published its **report on the first short-term review of the Geo-blocking Regulation** and an accompanying staff working document (the accompanying staff working document)<sup>6</sup> in November 2020, i.e. around 8 months after the date mentioned in the review clause, as the coronavirus pandemic had delayed the publication. The publication of this report less than 2 years after the entry into application of the GBR made it impossible to carry out a full-fledged ex-post evaluation of the GBR, as the European Commission's Better Regulation Guidelines recommend carrying out evaluations only when a reasonable amount of data has been collected over at least 3 years.<sup>7</sup>

This first report is divided into three main sections, looking at i) the implementation of the GBR; ii) the potential extension of the scope of the regulation; and iii) follow-up actions by the Commission.

<sup>6</sup> European Commission, [Report on the first short-term review of the Geo-blocking Regulation](#), COM(2020) 766, November 2020.

European Commission, [Staff Working Document accompanying the report - Part I and II](#), SWD(2020) 294, November 2020.

<sup>7</sup> European Commission, [Better Regulation Guidelines](#), SWD(2021) 305, 2021.

### 2.1.1. Implementation

The report notes some **delays in the notification of enforcement measures**, which had led to the launch of infringement procedures against six Member States (Cyprus, Spain, France, Poland, Romania, Slovakia). All procedures were closed once the Member States notified the relevant measures to the Commission.<sup>8</sup>

The report highlighted that further evidence needed to be gathered on the effectiveness, proportionality and dissuasiveness of the Member States' different enforcement measures for **business-to-business (B2B) transactions**. In fact, some Member States only offer the possibility of private enforcement, while others also allow for fines or criminal law sanctions for non-compliance with court orders.<sup>9</sup> The report also emphasised the need to monitor more closely how effective the wide range of applicable minimum and maximum fines both across and within Member States are, as well as how effective other remedies (e.g., the publication of the enforcement measures) are.

For the first months of the GBR's application, the Commission reported a relatively low number of questions and complaints – at least as a share of the overall number of questions and complaints – received by the **national consumer assistance bodies**. As a further source of information in this respect, the report presents the findings of a 2019 position paper by the European consumer centres (ECC) network (for more details, see the Section on the ECC network below).

The report explains the relatively low level of activity and cooperation in relation to the GBR within the **network of national enforcement bodies** (CPC) in the first year of the GBR's application, by the fact that the majority of Member States designated their enforcement bodies only after the spring of 2019. The number of complaints received and enforcement actions carried out by these bodies therefore does not cover the entire 2019 and not all Member States. A Commission survey that year received replies from only 13 competent authorities. The fact that more than one third of all complaints addressed to them had been outside the scope of the GBR shows that consumers were still unaware of its coverage. Blocking of access to online interfaces and rerouting were the most common grounds for complaints in most of the Member States that participated in the survey. The new [Consumer Protection Cooperation Regulation](#), which entered into application in January 2020, seeks to reinforce cooperation within the CPC network through new procedures and reinforced mutual assistance and alerts mechanisms. The accompanying staff working document includes some first encouraging (though modest) figures on its use as regards the GBR.

The Commission's assessment of the **application of the GBR by traders** is based on a mystery shopping survey carried out in the last quarter of 2019 and covering 9 000 websites.<sup>10</sup> The results were compared with a mystery shopping survey from 2015. In general, the 2019 survey did not reveal any major obstacles to **accessing websites and goods and services**. Travel services appeared to be the sector with the highest share (8.6 %) of websites not offering exactly the same service when accessing the website cross-border. More common than access blocking – although less frequent than in 2015 – were **price differences** for cross-border customers (27.2 %), partially caused by differences in VAT rates or higher cross-border delivery costs. Blockage at the **registration** stage was the most commonly experienced problem by cross-border customers. In

<sup>8</sup> Closing of the cases for Poland on 10 October 2019, Slovakia on 27 November 2019, Cyprus and Romania on 2 April 2020, Spain and France on 18 February 2021.

<sup>9</sup> Note, however, that the staff working document mentions Denmark, Greece, Ireland and Sweden in both lists of countries with different enforcement systems.

<sup>10</sup> European Commission, [Mystery shopping survey on territorial restrictions and geo-blocking in the European digital single market](#), June 2020.

14 % of the cases (compared to 26.9 % in 2015) that required a registration, cross-border customers were not able to register. In 10 % of the cases, cross-border customers faced restrictions in relation to the **payment methods** they could use.<sup>11</sup>

The mystery shopping survey also analysed to what extent traders provided **cross-border delivery**, despite these being outside the GBR's scope. Overall, the share of websites not offering cross-border delivery increased slightly to 53.1 % in 2019 from 51.8 % in 2015. On the other hand, the share of those offering delivery to all Member States increased to 22.7 % in 2019 from 22.0 % in 2015. For multinational traders, i.e. traders with different national websites, the Commission noted a more restrictive practice with respect to cross-border access than in the overall sample of the survey.

In total, around one third of cross-border shopping attempts in the EU-27 fulfilled the GBR's objective of offering the possibility to '**shop like a local**', showing a slight increase from 32.3 % in 2015 to 33.9 % in 2019.

It has to be noted that the Commission carried out this analysis prior to the outbreak of the coronavirus pandemic. Changes to both **consumer and trader behaviour** triggered by the pandemic were therefore not reflected in the 2020 Commission report. According to recent [Eurostat figures](#) (published after the Commission report), in 2020 around 12 % of EU businesses started or increased efforts to sell goods or services over the internet in the context of the pandemic. Eurostat data also shows that EU consumers increasingly purchase goods and services online, a trend that had already started before the pandemic.<sup>12</sup> The 2020 Commission report therefore underlined the need for further monitoring and research in this area.

In addition, the Commission expected synergies with other measures under the **digital single market strategy**, once they were put in place. As part of these measures, changes to the rules on [VAT for cross-border e-commerce](#), effective since 1 July 2021, were supposed to reduce compliance costs for traders operating cross-border and hence encourage more traders to deliver goods or services cross-border. By the same token, the Regulation on Cross-border Parcel Delivery, which applies since 2018, were supposed to help increase transparency of cross-border tariffs.

### 2.1.2. Extension of the scope

The second part of the accompanying staff working document looked into the potential extension of the scope of the GBR to different services. According to the review clause of the GBR, the Commission had to assess whether the GBR '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'. Besides, the Commission also presented results for the potential extension of the GBR to transport, financial, telecom, and health services.

The main source for the Commission's assessment of this aspect was a study published in 2020.<sup>13</sup> In addition, the results of a 2019 Eurobarometer were used for the assessment of the consumer

<sup>11</sup> The actual share might be even higher, as the activity of the mystery shopping survey stopped before the participants could place their orders and pay for them.

<sup>12</sup> See Eurostat data on Internet purchases by individuals (until 2019) (online data code: [ISOC\\_EC\\_IBUY](#)) and Internet purchases by individuals (2020 onwards) (online data code: [ISOC\\_EC\\_IB20](#)).

<sup>13</sup> European Commission, [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](#), 2020.

demand for cross-border access to content.<sup>14</sup> For the different types of copyright-protected services (online music, e-books, games/software, audio-visual), the study looked at availability, accessibility, price differences and consumer demand before assessing the possible effects of extending the scope of the GBR to cover the respective service. The accompanying staff working document also mentions the limitations (limited data availability for some Member States, focus on popular service providers, survey covering only eight Member States) that need to be taken into account when considering the results of the study.

An important point as regards access to and use of copyright-protected works is the provision laid out in Article 1(5) of the GBR that the GBR must not affect copyright law. As, according to the GBR, traders must 'hold the requisite rights in the relevant territories', consumers can only get access to online content services in another Member State if the service provider holds the right in their territories.<sup>15</sup> Changing these provisions could affect copyright issues in the event of a passive sale, i.e. when a service provider receives an unsolicited request from a consumer located in another Member State for which the trader does not hold the necessary rights.

Besides, competition law is another aspect to be taken into consideration in the context of access to audio-visual content in different territories. In 2016, the Commission ruled that commitments by Paramount Pictures not to enforce clauses that were included in broadcasting licence agreements signed, among others, with the Canal+ group, and that resulted in absolute territorial exclusivity, were legally binding. This is because the Commission considered contractual clauses that prevent a broadcaster from responding to unsolicited requests for pay-TV services (including copyright-protected works) from consumers outside the licensed territory (passive sales) would by their very nature constitute restrictions to competition. In a 2018 ruling, the General Court of the European Union confirmed the Commission's position, which was then appealed by the Canal+ group. In December 2020, the Court of Justice of the EU (CJEU) found that the General Court had erred in law in its assessment made in 2018. It therefore overturned the General Court's 2018 judgment and annulled the Commission's decision of 2016.<sup>16</sup>

### 2.1.3. Online music

The Commission concluded in its report that online music services (streaming or on-demand) are widely available in the EU, e.g. most of the major music streaming services are available in all EU Member States, with overlap ratios across national versions of over 90 % in the case of Spotify (data for other providers seems to be lacking). According to the underlying study, cross-border availability of transaction-based music content was also relatively high, reaching close to 90 % in the case of Apple iTunes in 2017.<sup>17</sup>

The Commission reports increasing consumer interest in cross-border access to music, even though domestic consumption is still much more important. When consumers try to access music providers' services in another Member State, the main problem they face is the automatic change of applicable conditions, among them price differences.

<sup>14</sup> European Commission, [Flash Eurobarometer 477](#): Accessing Content Online and Cross-border Portability of Online Content Services, Cross-border Access to Content Online, and Intra-EU Call, 2019.

<sup>15</sup> The Commission staff working document also notes that in most cases EU law does not define 'the criteria for determining the term 'relevant territories', for which the service providers need to obtain the requisite rights in order to make content available to customers.

<sup>16</sup> For further details, see Court of Justice of the EU proceedings [C-132/19 P](#).

<sup>17</sup> The term 'transaction-based' refers to instances where customers acquire access to an individual content item, as opposed to 'subscription-based' when customers acquire access to a catalogue over a period of time.

Price differences – much more than other factors such as language – seem to be a potential decisive factor for consumer behaviour, should online music services be included in the scope of the GBR. According to the Commission, considering the existing large price differences between EU Member States, consumers would move to less expensive versions of the same provider. Ultimately, this could also have a negative impact on providers' revenues, which the Commission estimates at around 25 % on average for the providers included in the study. In response to such potential revenue losses, providers could also put in place mitigation strategies, e.g. price harmonisation across countries or limited catalogues in some (cheaper) countries). A potential extension of the GBR could hence lead to cheaper prices for consumers in some Member States and to price increases in others.

#### 2.1.4. E-books

For e-books, the 2020 Commission report (and the underlying study on the impacts of the extension of its scope) focused its analysis on the transaction-based model, which is more widely used than the subscription-based model. Another major difference to the music sector is that the majority of e-book providers operate at national level, while the largest provider is in many cases a pan-European or global provider (e.g. Amazon and Apple iBooks).

The Commission assessment of availability, accessibility and price differences – as explained in the accompanying staff working document – focused on the two pan-European providers mentioned above, therefore excluding providers operating purely at national level. A study by the Commission's Joint Research Centre (JRC) from 2015 found a very high overlap (98.6 %) of catalogues in different national versions of the Amazon e-books store.<sup>18</sup> However, this analysis covered only a sample of the Top-100 best-selling titles. For the Apple iBook store, the average availability (i.e. overlap of different national iBookstore catalogues) was slightly lower, as identified by the 2020 Commission study. The limitation of the analysis to these two providers and the restricted data availability on smaller booksellers, however, do not allow for an assessment of availability and accessibility for the entire sector.

While price differences in national Amazon or Apple catalogues also exist for e-books, they are relatively smaller than for online music and show no clear pricing pattern across Member States. Consumer interest in local content and language differences are quoted by the Commission as reasons for the relatively low demand for cross-border access to e-books.

According to the Commission, extending the scope of the GBR to e-books could yield relatively limited positive price effects and a limited increase in e-book user numbers. However, these findings are only focused on the two pan-European providers and not on smaller providers. The Commission states, though, that smaller booksellers could face increased compliance costs while revenue from e-sales would only be minimal. In addition, extending the scope of the GBR could also negatively affect the fixed-price regimes for e-books in force in six Member States (Belgium, Germany, Greece, Spain, France, Slovenia), which are intended to protect smaller booksellers in order to preserve a more diversified offer of books.

#### 2.1.5. Games/software

In the area of video games, where the transaction-based model is the dominant one, the Commission found that cross-catalogue availability for the three analysed platforms (Steam, PSN, Google PlayStore) is in general high in all Member States. In this context, the Commission states that

<sup>18</sup> M. Batikas, E. Gomez-Herrera and B. Martens, [Geographic Fragmentation in the EU Market for e-Books: The case of Amazon. Institute for Prospective Technological Studies Digital Economy](#), Working Paper 2015/13. 2015.

'lack of availability in all Member States mainly affects the high (or very high, in case of very large catalogue with millions of titles and a large concentration of downloads as in Playstore) end of the tail, i.e. items with generally low demand'.

As regards accessibility of catalogues in foreign national versions of app stores, the Commission mentions the presence of restrictions encountered mainly at the registration phase.<sup>19</sup> These restrictions lead to changes in catalogue availabilities and prices in one third of the cases reported in the mystery shopping exercise carried out in 2019. Price differences on the national versions of the three analysed platforms seem to be rather small, to a large extent explained by exchange rates and rounding of prices in other currencies.

According to the Commission, consumer demand for cross-border access to video games and software is however quite limited<sup>20</sup> sensitive. Based on these findings, the Commission expects that by extending the scope of the GBR to videogames and software, the three analysed platforms would experience revenue losses between 2 % and 7 %, while consumers could benefit from small positive price effects. Similar to the case of e-books, the Commission also expects an increase in compliance costs for smaller distributors of games/software.

### 2.1.6. Audio-visual services

Although the paid online audio-visual sector is the largest (accounting for around €5 billion in revenues) among the copyright-protected digital content sectors analysed by the Commission, in 2017 it represented still only a small share of the EU's total audio-visual market (around €112 billion in revenues). In addition, the market for online audio-visual content is quite dynamic and complex, consisting of different business models, such as i) free-to-air and pay-TV catch-up services; ii) transactional video-on-demand (TVoD) and pay-per-view services; iii) subscription video-on-demand (SVoD) or streaming services; or iv) electronic-sell-through (EST) or download-to-own services.<sup>20</sup> In terms of revenues, the SVoD segment is by far the biggest business model, accounting for around 95 % in 2017. As pointed out by the Commission, the distribution and broadcasting of audio-visual content are largely carried out by local or national operators. As such, these operators seek licenses to content on a territory-by-territory basis, which hence play an important role in the audio-visual sector. Regarding funding of audio-visual content, the Commission stressed that early (public and private) financing sources are crucial for the production phase, which 'is usually achieved through the allocation of territorially limited and exclusive rights to distributors investing in the production ahead of the release (pre-sales), as well as strict control over release windows through different kinds of distributors'.<sup>21</sup>

The Commission also highlighted the EU rules that apply to the audio-visual sector:

- the [Audiovisual Media Services Directive](#) (AVMSD) which also regulates the functioning of online content services, without affecting the protection of copyright and related rights;
- the [Portability Regulation](#), which allows subscribers to an online content service in their own EU country (e.g. VoD, online TV, music streaming or online game marketplaces) to

<sup>19</sup> On cross-border accessibility, see also the information on the 'Google case' in the Section on the 'Consumer protection cooperation network'.

<sup>20</sup> For a detailed description of the different business models, see the Commission staff working document.

<sup>21</sup> This economic model for artistic works is also described as the most relevant financing source by G. De Gregorio, 'Regulating geo-blocking discriminatory practices in the digital single market', *Research Handbook on EU Media Law and Policy*, 2021, pp 190-207.

access their paid-for subscriptions when they are temporarily staying in other EU countries;

- the [Online Television and Radio Programmes Directive](#), which aims to improve the cross-border availability of TV and radio programmes in the EU, by making it easier to clear copyright and related rights for certain online services of broadcasters and for the retransmission of TV and radio programmes by means other than cable.

The Commission admits that because of the way the market is structured, assessing the cross-border availability, accessibility and price differences of audio-visual services is difficult, with many providers operating exclusively on their national markets and just a few of them operating across the EU. In the VoD streaming services segment, the offer on national markets differs substantially. According to a 2020 [JRC study](#), the overlap of national catalogues is in the area of 14-21 %, depending of the data source. When looking only at big VoD platforms (Netflix, Amazon, HBO), the cross-border overlap is much higher, within the range of 41-80 %, depending on the platform, although with little overlap between these platforms (20 %) or with smaller national providers (8 %). As the Commission explains, consumers perceive the audio-visual services sector as applying the highest level of geo-blocking. The Commission concludes also that price differences for SVoD services show a pattern of eastern European countries offering slightly lower prices than the rest (ranging from €5.99 in Lithuania to €11.67 in Denmark). At the same time, the average price per country depends on the offer, i.e. differences in the availability of and demand for certain platforms in some countries. These factors limit the meaningfulness of such average prices for platforms subscriptions.

As stated by the Commission, consumer demand for cross-border access to audio-visual content is still relatively low, with language and price being the main factors shaping consumer behaviour. While price differences seem to be the decisive factor for consumer demand with regard to access to live sport events, language accessibility plays a more important role in the area of other audio-visual content.

The Commission also acknowledges that the complexity of the sector makes it impossible to predict the potential impact of extending the scope of the GBR on the entire audio-visual industry. For this reason, the underlying Commission study focused on some SVoD services in just a few Member States.<sup>22</sup> The Commission also presented separate findings for two scenarios, according to which the existing licensing practices would still apply (scenario 1), or service providers would not need to hold licensing rights in the territories of customers requesting access to content via passive sales (scenario 2). Under scenario 1, price differences seem to be the main factor triggering cross-border demand, as consumers would probably get access to a more limited offer than the one used domestically if the provider does not hold the rights in the territory of the consumer requesting a passive sale. For the three pan-European providers, the potential effect would be a reduction in revenues (-4 %) and an increase in the number of subscriptions (+4 %). Under scenario 2, the expected consumer behaviour could lead to more use of services offering larger catalogues, or more switching across services, which could lead to higher revenues for the online providers. Again, the results for sport events could be different, since the demand for access to live sport events is highly price-sensitive.<sup>23</sup>

<sup>22</sup> In the Commission study, the effects on the three pan-European platforms (Netflix, Amazon Prime Video, Mubi) were analysed for Belgium, Bulgaria, Germany, Estonia, France, Ireland, Italy, Poland.

<sup>23</sup> In this context, the Commission also stated that sports events are the service where viewers resort most frequently to illegal sources. On [4 May 2023](#), the Commission encouraged Member States, national authorities, holders of rights and providers of intermediary services to combat commercial-scale online piracy of sports and other live events, such as concerts and theatre performances.

### 2.1.7. Other sectors

In its assessment of the situation in the **transport sector** (air, bus, maritime, train), the Commission concluded that in general geo-blocking in the sector is not very common. The Commission pointed to the existing non-discrimination clauses in the sectoral legislation for air, maritime and bus transport. For rail services, the Commission referred to the new non-discrimination provision in the then ongoing recast of the [Rail Passenger Rights Regulation](#), adopted in 2021, and which will apply in principle to all international and domestic rail journeys and services in the EU from 7 June 2023. The Commission therefore did not see the need to extend the GBR in this area.

Regarding **financial services**, the Commission listed a number of reasons why companies do not offer services in other Member States, including specific regulatory requirements or difficulties in carrying out due diligence checks for customers in other Member States. On the other hand, many consumers do not wish to access financial services in another Member State, among other things because of language barriers or lack of trust in foreign providers. Finally, for **telecom** and **health services**, provisions for non-discrimination of customers and patients are already in place in sector-specific legislation. The Commission therefore saw no need to extend the GBR to these services.

### 2.1.8. Commission follow-up actions

As the Commission report was published less than 2 years after the entry into application of the GBR, it considered it too early to draw any definite conclusion about the effects the implementation of the GBR was having. The Commission also wanted to wait for the effects of other measures addressed to the digital single market to materialise and monitor the situation of consumer access to offers over the following 12-18 months, i.e. until mid-2022.

Apart from the stakeholder dialogue (see box 1 below), the Commission planned the following actions:

- monitoring of the implementation of the GBR by Member States and greater cooperation within the CPC network;
- further guidance for Member States on the application of the GBR and its relationship with the Services Directive;
- awareness raising campaigns for traders and consumers;
- monitoring of market developments on customers' access to offers in the single market;
- collection of stakeholder feedback on the impact of the GBR and the implementation of the digital single market.

Under the specific objective of 'a fair, competitive and resource efficient digital economy' set in its [management plan 2022](#), the Commission Directorate-General for Communications Networks, Content and Technology (DG CNECT) announced that it would assess progress on the GBR. At the time of writing (mid-May 2023), no further information on this assessment was publicly available apart from the results of the stakeholder dialogue.

### Box 1 – Stakeholder dialogue on access to and availability of audio-visual content across the EU

As already explained earlier, the GBR does not apply to the provision of audio-visual services, and consumers are sometimes confused about the different rules applicable to access to audio-visual content or the fact the GBR does not cover audio-visual services.

In the context of its [media and audiovisual action plan](#), the European Commission launched in 2021 a [stakeholder dialogue](#) on access to and availability of audio-visual content across the EU, featuring participants from the audio-visual sector and consumer organisations. The objectives of this dialogue were to improve access to and availability of audio-visual content across the EU, to help the industry scale up and reach new audiences, and to enable consumers to enjoy a wide diversity of content.

During the four meetings that took place between November 2021 and December 2022, the Commission repeatedly asked the participants for industry-led solutions to reach the objectives of the dialogue. Concerning consumers' cross-border online access to audio-visual works, industry representatives emphasised the importance of territorial exclusivity for the sector, while representatives of consumer organisations were in favour of giving consumers cross-border access to audio-visual content and services.

During the phase of the dialogue, participants were also invited to provide written statements with proposals for concrete actions to contribute to improving online availability of and cross-border access to audio-visual works across the EU. Featured among the topics raised in the 10 [statements available](#) on the Commission website are, among others, ideas on how to provide access in unlicensed territories to older films having received national or EU funding or how to access to heritage films. Some participants were in favour of an obligation to provide access to such films, whereas others wanted to keep it voluntary. There was also no agreement on whether this idea could be implemented on an existing commercial VoD platform or new platforms would need to be developed, e.g. by national film funds.

Some stakeholders also claimed that the offer of online audio-visual content was already quite diverse and that the problem was rather the visibility and identification of the existing offer.

## 2.2. Consumer protection cooperation network

The cooperation network of national authorities responsible for the enforcement of consumer protection laws (CPC) was established by the [Consumer Protection Cooperation Regulation](#) in 2004 to ensure the smooth functioning of the internal market. In 2015, the Commission identified, in its [digital single market strategy](#), the need to enhance consumer trust through better enforcement of consumer rules through a review of the Consumer Protection Cooperation Regulation. The [revised regulation](#) was adopted in 2017 and became applicable on 17 January 2020. The enforcement of the GBR is one of the cooperation areas of the CPC network, along with unfair commercial practices, e-commerce, package holidays, etc. In 2019, the CPC network carried out an EU-wide screening of websites (a sweep), which checked, among others, consumers' access to websites. As mentioned in the 2020 Commission report, in 14 % of the cases (28 out of 204), access was blocked and in 7 % of the cases (14 out of 204) consumers were redirected without having been asked for their prior consent. A summary of the CPC network's recent activities can be found in its [latest biennial report](#).

Perhaps the most prominent action of the CPC network in recent years is its **dialogue with Google**, on topics such as consumers' right to access other national versions of the Google Play Store and non-discrimination regarding payment means in the Google Store. In its [common position](#) on Google's commercial practices and terms and conditions, the CPC network highlighted that, at the time the analysis was made, consumers could not access other national versions of the Play Store

app.<sup>24</sup> The CPC network considered it insufficient that Google had added a link to a help page with information on how to access national versions of the browser version of the Play Store, making it possible for all national versions of the online interface to remain easily accessible to the customer. In addition, the decision to grant access to or download possibility for an individual app in a specific country still depends on the conditions applicable to that specific app. The second issue in the common position was about the payment restrictions customers faced when trying to use the Google Store in another country version. Giving the example of the German Google Store, it was still not possible for consumers ordering from the German Google Store to add an address outside of Germany as the invoice address. According to a Commission [press release](#) of 26 January 2023, Google agreed to change its practices and to 'clarify how to browse different country versions of the Google Play Store and inform developers about their obligations under the Geo-blocking Regulation to make their apps accessible EU-wide, as well as enable consumers to use means of payment from any EU country'. The CPC network will need to monitor how Google acts on its commitments and works to remove the limitations users continue to experience when using apps that would normally be available in the country where they are temporarily located.

### 2.3. European consumer centres network

Financed by the Commission and the Member States' national authorities, the [European consumer centres \(ECC\) network](#) provides advice and assistance to consumers on their rights when shopping and travelling in another Member State (plus Norway and Iceland).

In 2019, the ECC network published a [position paper](#) that summarised the **main issues with the GBR** as perceived by consumers. According to this paper:

- there was a lack of clarity with respect to the scope of the GBR, as some consumers complained about services that were not covered by the GBR (e.g. copyright-protected works or insurance services);
- there was a misunderstanding about the (non-existing) obligation of traders to deliver to the consumer's country of residence;
- consumers were frustrated with the fact that redirection to national websites was still possible and that price differences still existed;
- some marketplaces and platforms refused to deliver specific products cross-border due to selective distribution imposed by the manufacturers;
- many traders did not allow self-collection or self-organisation of the delivery by the consumer in their terms and conditions, or refused to ship to transport companies specialised in cross-border parcel delivery;
- consumers were denied access to products and services due to their bank account being located in another Member State (that is, issues linked to the single European payment area);
- consumers were asked to provide a national identification number.

<sup>24</sup> The common position states that 'CPC Authorities analysed the Google Play Store, a web shop where consumers can, among other things, download or buy apps for the Google Android mobile operating system. This analysis is done based on the Play Store App version "24.7.28-21 (0) 366474158" in Belgium, using the English language version on 15 April 2021 and/while checking the English Terms of Service, version "Ireland August, 4 2020".'

In early 2023, the ECC network published another [position paper](#) on the GBR, which states that 'no evolution can be seen since 2019'. The exact coverage and scope of the GBR still seem to be unclear to consumers. Thus, for example, there is still some confusion on the coverage of the GBR and other legal instruments, such as the Portability Regulation, on access to digital services, such as apps, or on access to audio-visual content. However, consumers complain less about some issues, such as automatic redirection, which seems to be less common. On the other hand, some (small) traders face difficulties in finding shipping partners for certain locations and are therefore not able to offer goods delivery, while some consumers think that traders have an obligation to deliver cross-border.

### Box 2 – National reports on GBR implementation

In addition to the 2020 Commission report, some national authorities looked into the GBR implementation and outstanding issues for consumers and traders.

In December 2021, the **Swedish Consumer Agency** (*Konsumentverket*) published the [results](#) of a compliance check similar to the Commission's mystery shopping exercise, among 78 companies selling goods or services via e-commerce. The exercise focused on access to online interfaces and access to goods and services and revealed relatively few infringements of the GBR. The most important restriction for consumers, as detected by the exercise, related to the possibility of delivering goods to an area served by the trader (or picked up by the customer). In fact, 75% of the audited companies (24 out of 32) offering in-store pick-up required the consumer to provide a Swedish address, in contravention of Article 4(1) of the GBR. Other infringements of the GBR seemed to be less widespread. For instance, only 2 out of 50 companies with multiple versions of their websites redirected consumers without requesting their prior consent. Only 3 out of 72 companies required a Swedish identity document as a condition for completing an online purchase.

In June 2022, the **Portuguese Food Safety and Economic Authority** (*Autoridade de Segurança Alimentar e Económica – ASAE*) issued a [press release](#) on a national enforcement action targeting the GBR. The enforcement action consisted of the supervision of 774 economic operators and led to the launch of six infringement proceedings. Interestingly, the **Portuguese Parliament** adopted in 2021 [a law](#) on the prohibition of geo-blocking and discrimination practices in e-sales to consumers in the autonomous regions (Madeira and the Azores), applying to traders who provide goods or services on the national territory. The law largely mirrors the provisions of the GBR and applies them to domestic e-sales.

## 2.4. European Parliament positions

### 2.4.1. Parliament's plenary debate on 11 March 2021

Following a presentation by the Commission and first debate on the results of its report on the first short-term review of the GBR in a meeting of the Internal Market and Consumer Protection (IMCO) committee on [11 January 2021](#), the Parliament held a plenary debate on the GBR on [11 March 2021](#).

Among the topics raised by Members of the European Parliament (MEPs) were i) the enforcement of the implementation of the GBR through tools such as the consumer protection cooperation (CPC) network; ii) the extension of the GBR to copyright-protected audio-visual content; and iii) limitations based on payment methods or during registration. In particular, the potential extension of the GBR to audio-visual content raised many questions, with some MEPs for such an extension and others against it or demanding more analyses and reviews before taking further action on the regulation.

On behalf of the Commission, Commissioner Johannes Hahn highlighted three themes in his response: enforcement of the regulation, cross-border deliveries, and audio-visual content. Regarding enforcement, he noted that the Commission cooperates with the national authorities and with the CPC network to ensure the enforcement of the GBR at national level. Commissioner Hahn shared the Parliament's views on the importance of proper enforcement of the GBR and said that the Commission would identify concrete actions regarding audio-visual content based on the

upcoming stakeholder consultation (see box 1 on the stakeholder dialogue above). In an effort to bring the benefits of the internal market to consumers and to account for the needs of the entire ecosystem, the Commission would continue monitoring the implementation of the regulation and harmonise it with other internal market measures. Lastly, he noted that the Commission would evaluate the progress achieved by the Geo-blocking Regulation at the end of 2022, and decide on further action.

## 2.4.2. Parliamentary questions

Since the adoption of the GBR, MEPs have raised a number of questions both about the larger context of geo-blocking and about specific cases and potential violations. This section provides a non-exhaustive overview of these questions.

Pascal Arimont (EPP, Belgium) ([E-001692/2022](#)) asked the Commission whether **blocking access to online newspaper subscriptions across Member States** goes against the Geo-blocking Regulation, when the blocking is in response to cybersecurity threats. In its answer, the Commission stated that the national rules and circumstances linked to the specific case determine whether blocking access to certain websites in response to cybersecurity threats is in compliance with the GBR and the Services Directive.

Emmanuel Maurel (GUE/NGL, France) asked a related question ([E-003580/2019](#)) on the potential **inclusion of e-books** in the GBR, which would favour large tech companies and have negative effects on local bookshops. Thus, he asked the Commission about the plans for leaving e-books outside the scope of the GBR, and inquired about the Commission's plans to prevent the concentration of e-book distribution. The Commission replied that geo-blocking does partially apply to e-books (obligation to access the interface and non-discrimination of payment methods), and that after the regulation's 2020 review it would assess possible follow-up legislation on e-books. Concentrations are reviewed both at national and EU level, to prevent any obstacles to effective competition and to provide a level playing field for sellers.

MEPs' attention was also drawn to a number of cases involving supposed breaches of the GBR by large **technology companies**. Questions [E-004010/2021](#) by Martin Hojsík (Renew, Slovakia) and [E-004086/2021](#) by Marcel Kolaja (Greens/EFA, Czechia) both concerned the **delayed Disney+ launch date in central and eastern Europe** compared to some other Member States. They were both concerned about this ongoing discrimination going against the GBR. Commission clarified that the GBR is not applicable to audio-visual services such as Disney+. Nevertheless, the Commission was planning a stakeholder dialogue to assess how audio-visual content could be better accessed within the EU, and planned follow-up steps according to the outcomes of the consultation (see also box 1 on the stakeholder dialogue).

In question [E-004879/2020](#), 18 MEPs<sup>25</sup> asked the Commission about the **inclusion of copyrighted content** in the GBR, to ensure equality amongst EU citizens, with a particular focus on accessing cross-border content for linguistic minorities. The Commission shared their views that accessing copyrighted content across borders would facilitate cultural diversity and be beneficial for linguistic minorities. The recently adopted Online Television and Radio Programmes Directive made the licensing of rights for certain contents easier, which would have positive effects for linguistic minorities. Following their 2020 review of the GBR, the Commission was going to launch a stakeholder dialogue with the audio-visual sector to assess next steps.

<sup>25</sup> Loránt Vincze (EPP), François Alfonsi (Greens/EFA), Kinga Gál (NI), Herbert Dorfmann (EPP), Fernando Barrena Arza (GUE/NGL), Valdemar Tomaševski (ECR), Andrea Bocskor (NI), Marco Campomenosi (ID), Andor Deli (NI), Izaskun Bilbao Barandica (Renew), Łukasz Kohut (S&D), Iuliu Winkler (EPP), Carles Puigdemont i Casamajó (NI), Yana Toom (Renew), Antoni Comín i Oliveres (NI), Rasmus Andresen (Greens/EFA), Clara Ponsatí Obiols (NI), Atidzhe Alieva-Veli (Renew).

In question [E-000470/2021](#) Pascal Arimont (EPP, Belgium) asked the Commission whether **Apple's practice of assigning national iTunes App Stores to users** based on their credit cards does not go against the GBR. In its answer, the Commission agreed that such a practice goes against Article 3 of the GBR, but highlighted that it is the Member States' responsibility to enforce the regulation. Tomáš Zdechovský (EPP, Czechia) asked the Commission in [E-000543/2021/rev.1](#) about a specific case in which the **German Google Store charged less for a mobile phone than its Czech counterpart**. However, when the consumer concerned ordered the product through the German Google Store, the store blocked the purchase and refused to ship the product to Czechia. In reply to the question whether this constitutes illegal geo-blocking, the Commission remarked that while Article 4 of the GBR prevents discrimination based on residence, nationality and establishment, it does not oblige vendors to sell and deliver across the EU. However, under the 'shop-like-a-local' principle, if customers organise delivery through services such as forwarding companies, vendors cannot block them from making the purchase.

Lastly, in question [E-002682/2021](#), EPP MEPs from Portugal Cláudia Monteiro de Aguiar, Paulo Rangel, José Manuel Fernandes, Maria da Graça Carvalho, Álvaro Amaro and Lídia Pereira drew the Commission's attention to **location-based discrimination in the area of e-commerce in the autonomous regions of Madeira and the Azores**, and inquired about its plans to end this practice. In its answer, the Commission reiterated that while geographical discrimination goes against the GBR, vendors are not obliged to deliver anywhere outside of the service area set up in their general conditions. The Commission also highlighted that differing delivery conditions for certain regions may be justified in accordance with Article 20 of the Services Directive.<sup>26</sup>

## 2.5. Advisory committees

### 2.5.1. European Economic and Social Committee

According to the EESC's [opinion](#) on the cost of non-Europe – the benefits of the single market, adopted on 13 July 2022, the GBR has had positive effects on commerce in the EU, yet territorial supply constraints (TSCs) persist, subjecting consumers to geo-blocking. TSCs practices, such as limiting sale quantities, product ranges and prices depending on the Member State at hand lead to geo-blocking, as does limiting the number of languages used on product packaging. These practices interfere with the functioning of the single market and harm consumers, and the EESC therefore calls on the Commission to address them.

Furthermore, in its [opinion](#) on the Commission's communication on Europe's media in the Digital Decade: an action plan to support recovery and transformation, adopted on 27 April 2021, the EESC welcomes the Commission's stakeholder dialogue on access to and availability of audio-visual content across the EU.

### 2.5.2. European Committee of the Regions

In its [opinion](#) on the Media in the Digital Decade: An Action Plan, adopted on 7 May 2021, the European Committee of the Regions (CoR) supports expanding the scope of the GBR and including audio-visual content in it, in order to meet the high demand for such a move across EU borders and offer the linguistic minorities the benefits it would involve.

<sup>26</sup> Article 20(2) of the Services Directive states that '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.'

The CoR reiterated this in its [resolution](#) on a Vision for Europe: the Future of Cross-border Cooperation, adopted on 1 July 2021, highlighting that access to audio-visual content would benefit border regions and linguistic minorities, and that thus geo-blocking should be limited.

## 2.6. European Court of Auditors

According to its [2023+ work programme](#), the European Court of Auditors is planning to publish a special report in 2024 to assess the effectiveness of the legislative framework and actions taken by the Commission and Member States in removing barriers to cross-border e-commerce and protecting consumer rights.

## 2.7. Stakeholder positions and reports

In March 2023, the **European Consumer Organisation (BEUC)**, which had also participated in the above-mentioned stakeholder dialogue on access to and availability of audio-visual content across the EU, published a [position paper](#) in the context of the EU single market's 30th anniversary. BEUC expressed the opinion that, 'building on the existing rules on geo-blocking in e-commerce, online broadcasting and content portability, the EU must finally put an end to geo-blocking in audio-visual services'.

In 2020, a [study](#) carried out for the European retail and wholesale sector organisation **EuroCommerce** regarded TSCs as a major cross-border trade barrier that hampers the functioning of the single market and leads to higher prices for retailers, who then pass on the higher prices to consumers. With respect to the implementation of the GBR, the study concluded that consumers were now able 'to shop for the best price within the entire EU internal market'. Retailers, on the other hand, would still face restrictions when sourcing cross-border in the EU.<sup>27</sup>

Finally, a 2020 [study](#) funded by a **group of audio-visual businesses** rejected any changes to the current principle of territorial exclusivity in the audio-visual sector, as abandoning this principle would endanger the current economic model and could lead to fewer audio-visual productions and hence reduced consumer choices. The study also rejected the idea of language exclusivity as an alternative to territorial exclusivity.<sup>28</sup> It argued that, while exclusive licensing of different language versions is possible, the idea behind it could be undermined by automatic translation technology that could, for example, auto-generate subtitles. It could also lead to a situation where several language versions circulate at the same time in one territory, representing an investment risk for local distributors.

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<sup>27</sup> In 2020, a [Commission study](#) on territorial supply constraints in the EU retail sector (focusing on four food product categories and two non-food product categories) concluded that 'TSCs restrict cross-border trade in the Single Market and, as a result of certain types of TSCs, retailers are not able to source their supplies from the cheapest location in the EU from which a manufacturer sells, either directly or indirectly through wholesalers'.

<sup>28</sup> For more details on the language exclusivity approach, see: [Research for CULT Committee – Film Financing and the Digital Single Market: its Future, the Role of Territoriality and New Models of Financing](#), Policy Department for Structural and Cohesion Policies, European Parliament, January 2019.

### 3. Conclusions

As an important strand of the digital single market strategy, the GBR has now been in application for more than 4 years. Following the Commission's first report on its implementation, published in 2020, it is now time to plan for a report on the evaluation of the regulation, which, according to its review clause, should be carried out and presented by the Commission in 2025.

While the 2020 Commission report showed that the implementation of the GBR had fostered some positive developments, there is still room for improvement. As regards the GBR's implementation, for instance, and as stated by the Commission itself, there is a need for further evidence on the **effectiveness, proportionality and dissuasiveness of the different enforcement** measures at national level in the context of business-to-business transactions. Additionally, the Commission mentioned in its 2020 report the need to closely monitor the **effectiveness of the large variation of minimum and maximum fines** across and within Member States.

Still in the area of enforcement, there is a need to update and complement the **figures on complaints** received by the national enforcement bodies which would make it possible to detect possible areas of concern for consumers. In this context, a **mystery shopping exercise** and a comparison with the 2015 and 2019 mystery shopping exercises, could help identify outstanding problems.

As already highlighted by the Commission itself, it is very difficult to draw definite **conclusions about the potential extension** of the scope of the GBR to copyright-protected works, because of the complexity and dynamics of the markets they are offered on. The Commission analysis therefore focused mostly on big pan-European or global providers of services offering access to copyright-protected works and a limited number of Member States. While these providers might have relatively high market shares, the analysis does not allow for conclusions about smaller providers active at national level.

**Online music, e-books and software/games** seem to already be quite readily available cross-border, and a potential extension of the GBR to the related services could potentially lead to negative price effects for consumers in some countries. In addition, smaller service providers could face higher compliance costs as a result of an extension of the GBR's scope.

For **copyright-protected audio-visual services**, both the Commission report and the stakeholder dialogue showed that the sector is strongly reliant on the current financing and licensing model, and that extending the scope of the GBR could have considerable consequences for the economic sustainability of the sector. When assessing the effects of a potential extension in its report, the Commission focused on a number of SVoD service providers and on several countries, as it could not cover all of the business models. It seems to be a challenge to strike a balance between consumers' expectations with respect to cross-border access to copyright-protected audio-visual services and the economic needs of the sector.

While waiting for the Commission evaluation of the progress made by the GBR, the position papers published by the **ECC network** also show that the coverage of the GBR is still unclear to some consumers and that traders who want to deliver goods cross-border sometimes face difficulties.

Finally, the **coronavirus pandemic** had also affected the publication of the Commission's first report in 2020, which arrived later than planned and could not take into account the impact of the pandemic on consumer behaviour and businesses active in e-commerce. The next Commission

report will therefore offer the opportunity to pay attention to the shift in consumer and business behaviour triggered by the pandemic.

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[Directive 2009/22/EC](#) of 23 April 2009 on injunctions for the protection of consumers' interests.

[Directive 2010/13/EU](#) 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).

[Directive \(EU\) 2019/789](#) 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.

[Regulation \(EU\) 2017/1128](#) of 14 June 2017 on cross-border portability of online content services in the internal market

[Regulation \(EU\) 2017/2394](#) of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

[Regulation \(EU\) 2018/302](#) of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market.

[Regulation \(EU\) 2021/782](#) of 29 April 2021 on rail passengers' rights and obligations.

## FURTHER READING

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More than 3 years after the entry into application of the Geo-blocking Regulation (GBR) and more than 2 years after the publication of the Commission report on the first short-term review of the GBR, the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) decided to draft a report to establish the extent to which implementation of the GBR had contributed to the integration of the internal market and thereby to better deals for consumers and more opportunities for businesses.

The present EIA seeks to assist the IMCO committee in its drafting process, by synthesising the available information on the implementation and enforcement of the GBR. It therefore presents relevant material such as reports and opinions of EU institutions, EU bodies and stakeholders.

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