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Commission conference (DG GROWTH) “Buying services everywhere in the EU”

Applying Article 20 of the Services Directive

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Introduction

- Thank you Ms Despina Spanou, and thanks to the European Commission for inviting me to speak here today.
- As many of you know, BUSINESSEUROPE is the main horizontal business organisation at European level. Through our national member federations in 33 countries, we represent more than 20 million companies across the EU.
- Today, we are discussing a very important topic: improving the functioning of the single market, for consumers, citizens and businesses. BUSINESSEUROPE has always been a strong supporter of the single market as it is Europe's key driver for growth, job creation and enables us to better compete with the rest of the world.
- Therefore, we are so keen on making it work better.

Main messages

- Much has already been said this morning, but Article 20 of the Services Directive is an important instrument to make the single market work better. It is particularly relevant for e-commerce as the selling of a good online is considered a service.
- It prohibits discrimination. So different treatment in terms of price or conditions on the basis of nationality or residence of recipients of services.
- Let me underline that companies, who are also service recipients, fully share with consumers the common interest not to be subjected to differential treatment in price or otherwise, or refusal to supply!
- Furthermore, it is important for all that consumers and businesses have trust in the single market and are confident to buy or sell across borders.



- Yet, as noted earlier today, there may be several objective reasons for different treatment or additional costs, due to for example:
 - **Different market conditions**, driven by competitive pressures such as higher or lower demand influenced by seasonality, competitor pricing or extra risks linked to different national rules.
 - **Additional costs due to distance**, obviously linked to delivery or the need to physically go to another Member State to deliver the service.
 - **Dissimilar VAT rates**, which take into account the country of residence of the customer.
 - **Payment issues**, often linked to costs for the use of different payment methods.
 - **Different electronic waste disposal regulations**.
 - **Lack of Intellectual Property (IP) protection**, etc.
- These objective reasons for different treatment, which have been recognised by the Commission in its 2012 Staff Working Document towards the establishment of Guidelines for the application of Article 20, are a direct result of remaining barriers in the single market.
- Companies should not be blamed for the existence of these remaining barriers, caused by a lack of harmonisation at EU level, a lack of mutual recognition, diverse national rules or diverse interpretation by Member States of EU legislation!
- In fact, many businesses would be willing to enlarge their client-base and therefore expand their business to other markets where conditions make it possible and profitable. Whenever that does not happen, it is often because of these objectively justified reasons.
- Furthermore, the Commission Staff Working Document rightly states that "*businesses are free to determine the geographic scope to which they target their activities within the EU, even when selling online*".
- So my key message for today is clear:
 - 1) We believe the legislator should not aim to force companies to sell cross-border at any cost and should also avoid putting excessive administrative burden on companies through the introduction of complicated explanation obligations.
 - 2) Instead, we are convinced that the legislator must tackle the root of the problem and analyse the precise reasons that lie behind the decision of a company not to sell to certain markets in the EU. Article 20.2 only points the finger at the problem of refusal to provide services, but does not contribute to solving it.



- We agree that creating more transparency on objective reasons for differential treatment could be an alleviating factor for recipients' frustrations (consumers and businesses!) for not having access to a certain service or receiving differential treatment.
- However, the Commission should be very careful with putting extra burdens on companies - especially in today's difficult economic circumstances - to explain why they do not deliver their service in a certain Member State, in particular for companies operating online.
- **EXAMPLE:** Imagine the burden, which is a cost (1), on a small online sports webshop in Austria to explain for every item there in which countries it delivers, for what price, and why, or why not, and this may differ for the skies, compared to gloves or helmets and even entire skiing outfits.
- There would be a need to regularly update the list of countries and products, and also the objective reasons (so the explanation) for providing a service or not as market conditions and regulatory hurdles may change. Yes, it would almost be a fulltime job. Which is disproportionate, especially for companies of maybe 3 or 4 employees.
- For companies with a website that never even considered operating abroad this additional burden would be even more disproportionate!
- Of course, already now, if recipients approach a company directly, they will get a full explanation for different treatment or for the reason their services are not provided in that specific country.
- Furthermore, in order to best serve their clients, many companies are already providing information on where they deliver and other useful info.
- Especially, seeing recent court cases on where sales are "directed" this is problematic and might cause some shops – especially SMEs and start-ups - to seriously consider to go or stay offline. Which is obviously NOT what we want.

The way forward

- In terms of the way forward, it might be good to look into which areas and which sectors problems arise. And how often. And try to address this with a more targeted approach.
- Maybe the Commission should consider a public consultation to gather more evidence and paint a clearer picture of situation, also publishing the main results.
- Again, companies are also service recipients. We absolutely oppose discrimination, but it is often more of an information issue and the question is who should explain to consumers and businesses that in certain cases there are objective reasons for

different treatment and that the single market is not yet complete. I guess the answer is all of us. It is a shared responsibility.

- Therefore, we wholeheartedly welcome the Article 20 brochure on buying services everywhere in the EU that the Commission published last year.
- Furthermore, business federations should continue to encourage companies to be as clear and detailed as they can on their website.
- Also consumer organisations and Member States have a key role to play here.
- However, as stated before, we need to address the problem at the root, which is that we need to remove remaining obstacles to the free movement of services, and e-commerce in particular.
- Here we think of:
 - Legal fragmentation
 - Diverse national standards
 - Lack of harmonised rules, such as for consumer legal guarantees
 - Copyright
 - Data protection
 - Payments and delivery issues
 - Insurance

The list goes on! Let's start with identifying the obstacles and address them in an ambitious manner.

In this context, BUSINESSEUROPE is expecting a lot from the announced Commission Internal Market Strategy for goods and services, where a comprehensive report on the remaining obstacles (legislative and non-legislative) for the free movement of services should be a core part.

We have already proved input to this process and stand ready to discuss further.

Thank you for your attention.

List of objectively justified reasons by BUSINESSEUROPE

- Criteria that may justify different conditions of access to a service:
 1. **Different market conditions:** providers are free to adjust their pricing or conditions in the various markets in line with competitive pressures such as higher or lower demand influenced by seasonality, pricing by competitors or extra risks linked to rules differing from those of the Member State of establishment.
 2. **Additional costs due to distance:** price differences may occur due to place of residence of the customer that demands the service (such as higher costs linked to the provision of service in another Member State). This also covers costs related to putting delivery arrangements in place for a limited volume of cross-border sales, i.e. too little demand to make provision attractive.
 3. **Technical specifications:** could apply for certain services e.g. to electrical appliances such as different plugs, etc.
 4. **Payment issues:** limited alternatives to credit cards as a means of payment at a distance, higher risk of fraud attached to acceptance of non-national credit cards, lack of access to credit registers cross-border, varying MIF charges or insufficient local resources in place to administer specific payment means (e.g. cash on delivery).
 5. **Contractual obligations:** for instance when providers are forbidden to offer services to recipients resident in a given country due to a contractual relationship between manufacturer/supplier and distributor in that country.
 6. **Dissimilar VAT rules:** for business to consumer online sales of goods, the VAT rate is determined based on residence of the customer, which will affect prices. For online sales of services, the VAT rate applied is that of supplier, but from 2015 this will change and the VAT rate will be determined by the location of the customer.
 7. **Different electronic waste disposal regulations:** different requirements and levels of fees and thresholds for registration and reporting of electronic equipment – can be too difficult for traders to deal with when selling cross-border.
 8. **Legal compliance issues:** Traders face potentially high compliance costs in dealing with differing contract and consumer protection laws in different Member States that they may perceive as disproportionate to the sales made outside of their Member State of establishment.
 9. **Lack of intellectual property rights:** Difficulties in acquiring license agreements for required rights in each territory. The lack of required rights may

lead to refusal to supply digital downloads of music, games, software, e-books, etc. in certain Member States.

10. **Private copying levies:** level of levies and products which it applies to greatly differs per Member State.

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