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The Impact of Geo-blocking Ban on the Development of the European Digital Single Market

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Abstract. The ban of geo-blocking intervened in recent years within the borders of the European Union and it represents not only a control and even an elimination of the discrimination regarding the nationality of the customers on the on-line trade, but also a mean of gaining important economic benefits for all the participants and countries involved. The current study aims in presenting and analyzing the importance and necessity of the existence of a set of legal documents that focus on eliminating the unjustified geo-blocking in the e-commerce, as well as the benefits such measures bring not only at the level of the economy of each Member State, but also the impact upon the customers - as important participants to the digital single market-, products and pricing.

Keywords. geo-blocking, digital single market strategy, e-commerce, nationality discrimination

1. Introduction

The fast expansion in the recent years of the e-commerce and its impact upon the economy of each state and on the world platform cannot be put into question, as many transactions started to transfer in the online environment due to its fastness and easiness.

The e-commerce or, as it is also known, the electronic trade, is a concept used for any type of business or commercial transaction that involves the transfer of information over the internet. Therefore, it can apply to a wide range of businesses, from websites that sell retail products, to trade in goods and services between large corporations.

It was actually practically proved that it is more difficult for smaller companies and business to remain meaningful in the market and compete with the giant corporations, but this also means that they need to permanently be informed and adaptable for the new digital requirements (Baker-Brunnbauer Josef, 2019).

As such, at the current moment, one can only admit that e-commerce became not only an engine in the development of the economy worldwide, but also one of the most important elements in relation with the internet.

The novelty brought by the e-commerce consists mainly in allowing the consumers to exchange products and services in a virtual environment without such obstacles as time or distance (Cairncross, Frances, 2001). As a consequence, in the nearby future it is expected to rise even more and narrow the distance between this and the traditional trade. The advantages the e-commerce brings to the market are obvious, such as lower costs for the seller, bigger opportunities for the development of companies, faster way of operating due to permanent

relation and help from carriers worldwide and definitely less time consumed and more rights for the customers.

The European Union was aware early stage on the high importance of technology and its impact on all domains, which led to the intention and later on permanent progress in the creation of the digital single market.

The Digital Single Market Strategy points out that the digitalization of the world economy is operating with maximum speed and as such, the European Union needs to intervene in helping the Member States take advantage of this stream which leads to creating huge opportunities for innovation, growth and new jobs (European Commission, 2015).

Due to the impact of the electronic trade on the everyday life, it was clear that certain limits and rules had to be provided for the purpose of not becoming intrusive and this not only on the companies practicing it, the fair competition, the protection of consumers, but even on the discrimination practices between countries.

Therefore, in order to eliminate such abusive and discriminatory practices, at the European Union level was adopted the Regulation (EU) 2018/302 addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market.

The ban of geo-blocking which intervened in recent years within the borders of the European Union represents not only a form of supervision, but also an elimination of the discrimination regarding the nationality of the customers on the on-line trade and means of gaining important economic benefits for all the participants and states involved.

The current study aims in presenting and analyzing the importance and necessity of the existence of the rules focusing on the elimination of unjustified geo-blocking in the e-commerce, as well as investigating the possible benefits of such measures for the Member States, and also the impact on the customers - as important participants to the digital single market-, products and pricing.

2. The objectives and the achievements of the digital single market

The purpose in the creation of the digital single market (article 26 paragraph 3, Treaty on the Functioning of the European Union) at the level of the European Union was and continues to be the removal of barriers in matters concerning the on-line cross-border transactions, being based on the concept of a single market (article 4 paragraph 2 letter a) from the Treaty on the Functioning of the European Union), which has as main purpose the elimination of all trade barriers between the Member States of the European Union.

The digital single market manages to profit the economy and improve, on the whole, in general, the quality of life of the citizens. Because both the markets and the offered services are transposing themselves online, the creation of a legal framework was necessary, especially in relation to the personal data transfer taking place without borders. As such, the protection of personal data and privacy was essential, as well as offering a proper cyber security both at a national and European Union level. As such, the legal language had to develop new concepts and new regulations regarding the blockchain, personal data, dynamic data, fintech, artificial intelligence, identifiable natural person, big data etc. (Conea Alina Mihaela, 2019)

For example, in Case 210/16 Wirtschaftsakademie Schleswig-Holstein GmbH (Case C-210/16, 2018) on the protection of individuals with regard to the processing of personal data, the Court of Justice of the European Union has ruled on the interpretation of the concept of operator, as well as on the extent of the powers of intervention of the supervisory authorities with regard to personal data processing that involves the involvement of several participants. As such, it was

decided to deactivate a Facebook page that allowed the collection and processing of certain data related to the visitors of that page.

Also, in Case 207/2016 *Ministerio Fiscal*, the Court of Justice of the European Union has ruled on the possibility of justifying the authorities' access to personal data held by providers of electronic communications services, in case of crimes, the seriousness of the crime being able to justify the access to such data (Case C-207/16, 2016).

Among the benefits of the digital single market, certain aspects can be nominated, such as an almost unlimited access to information, environment protection and elimination of its footprint, not to mention developed administrative measures and frequent diminished costs for the transactions for both the operators and the customers (Directorate General for Internal Policies, 2014).

One of its main achievements in the matter is the relaunch of the economy of the European Union on the whole. Even so, the past measures taken cannot be questioned in their role towards the development of a digital single market, such as, for example Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (No longer in force, ending its validity on the 24th of May 2018) or Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (No longer in force, ending its validity on the 12th of January 2018).

As regards the data protection package, currently in force are row acts, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.

The above-mentioned rules offer the European citizens a guarantee on the access to their personal data, on how that it is being made and operated, the information transferred, their right to have the information deleted and also to be notified when a cyber-attack takes place.

However, certain past measures still remain in force today, regulating different aspects of what currently forms the digital single market, such as, for example, Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').

According to the official documents (European Commission, 2015), the Digital Single Market Strategy is based on three pillars (Jose Schmidt-Kessen, Maria, 2018).

First of all, it tends to offer a better access for consumers and businesses to online goods and services across Europe. Second of all, it creates and adapts the perfect conditions that will lead to a development of the digital networks and services, implying, among them, high-speed, content infrastructure, fair competition etc. Last, but definitely not least, it needs to fulfill its purpose of growing the potential of the European digital economy, which can only be achieved by permanent investment in technologies, research and skills. (European Commission, 2015)

The permanent investment the European Union needs to make in infrastructure is vital (Mason S., Bromby M, 2012), as they need to constantly update and ensure new means of communication, media rules and create an adequate environment to keep promoting any new digital single market facilities (UpFront News, 2015).

Among other use of the digital single market, we could emphasize, especially as we are still currently undergoing the effects of the Coronavirus SARS-CoV-2, that on the 8th of April 2020, the European Commission offered a recommendation regarding a set of tools for the use of technology and data to combat and emerge from the COVID-19 crisis (European Commission, 2020).

According to the issued document, the recommendation establishes the process of developing a common approach for the use of digital media for combating the crisis. The toolkit, as it is called, consists of particular measures for effective use of technologies and data, with a particular focus on two areas, respectively:

- a pan-European approach to the use of mobile applications, coordinated at the level of the European Union, to enable the citizens to apply more effective measures for social distancing, as well as prevention and detection of contacts to help limit the spread of the illness;
- a common system for the use of anonymised information on the mobility of the population for the purpose of estimating the illness progression, monitoring the effectiveness of the decision-making process of the Member States' authorities on isolation and social distancing measures and collecting information in order to develop a coordinated exit strategy from the disease.

3. The geo-blocking concept and technology

The early understanding of the European Union's leadership of the expansion of the digital technology in all fields of activity led to the creation of the digital single market and its position in the top ten political priorities for the future years (Castets-Renard Celine, 2016).

In the recent general aptitude of consumers to use the e-commerce more and more frequently, it was actually statistically analyzed and proved that the tendency for the European Union consumers is more towards buying and practicing on-line trade more from the inside of the European Union rather than from states outside it (Martens Bertin, 2013).

However, such studies do tend to point out, also, both benefits and weaknesses of the permanently in development digital single market.

One of the corrections coming from the European Union was the issue of Regulation (EU) 2018/302 of the European Parliament and of the Council 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 and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R0302>).

Geo-blocking can be defined as representing a discriminatory practice that prevents customers from buying products or services on-line using a website based in another Member State. It is considered that by removing the geo-blocking, the consumers will benefit from a wider range of products and services, businesses will get more opportunities to develop and the economy on the whole will rise. This is the reason for which a ban on the geo-blocking is seen as a crucial aspect of the Digital Single Market Strategy.

The discrimination criteria the elimination of the geo-blocking focuses on is that of the citizenship or nationality of the consumers, the place of domicile or residence and headquarters. The controversy about the geo-blocking has actually arisen after the year 2000, with the E-commerce Directive (Directive 2000/31/EC, 2000). Although it offered a strong protection for copyright in certain territories, it did not provide anything regarding the issues of the geo-blocking (Hoffman Jacklyn, 2016).

Geo-blocking on the whole was seen as anachronistic and an extra cost on the consumers, for actually having to pay for services they wanted to benefit from in a borderless digital world (Hoffman Jacklyn, 2016).

The current Regulation was published in the Official Journal of the European Union on the 23rd of March 2018 and was put into force from the 3rd of December 2018, in order to give the smaller traders enough time to adapt to its provisions.

However, the intention of the European Commission is to analyze the impact of the application of the regulation on the market at the end of 2020, after two years from its entering into force. After the results are to be seen, it will be clear if new rules need to be adopted and to which types of services.

As stated above, the reasoning for issuing the Regulation was for it to bring an essential contribution to the development of the digital internal market, more precisely to prevent any unjustified discrimination between customers from the European Union that could appear due to nationality, place of residence or domicile, headquarters, and any other unjustified differential treatment.

According to the Geo-blocking Regulation, a merchant is not allowed to block or restrict in any way, mainly through technological means, the access of the customer to the merchant's online interface for reasons regarding the citizenship, nationality, place of domicile or residence or headquarters of the consumer. The same criteria is forbidden to be practiced for geo-blocking regarding the customer's access to goods and services or for the grounds of payment when practicing such trade (Jose Schmidt-Kessen, Maria., 2018).

As such, it can be said that the Regulation faces three spectres of the on-line trade where geo-blocking is forbidden, respectively: on-line interface, access to goods and services and means of payment.

In what matters the *on-line interface*, when talking about the sphere of application of the geo-blocking Regulation, it is essential to emphasize that it cannot apply in the internal on-line trade practiced only inside one Member State, neither to other types of services, which are regulated in accordance with the purpose of the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0123>), such as, for example financial services, transportation, health, or audio and visual services.

It is forbidden for the traders to block the customer's access to websites and redirecting them to other online interfaces without their prior consent. However, in certain cases, the situation of such restrictions or even blockings might be necessary, even without the consent of the consumer, for nationality reasons, or the fact that the consumer performs its activity in a Member State, by limiting their access to certain displays of goods and services in some Member States. If such situations occur, traders are not prevented from offering restrictive access to their interfaces when such measures are necessary, but if such blocking, restrictive access or redirecting pages has a justification according to European or national legislation, the merchants must always offer an explanation to their customers.

As far as the *access to goods and services* is involved, there are three particular situations when merchants are not allowed to apply different access conditions based on the citizenship, nationality, domicile or headquarter criteria, respectively the delivery and sale of goods in an area operated by the merchant, the sale of electronically provided services or the sale of services provided in certain specifically mentioned locations.

Regarding the *means of payment* of such on-line goods and services, the discrimination is considered to occur when the payment refusal intervenes even though it was made through the electronic transactions by credit transfer, debit card, credit card and their brand indicated for the payment was correct, if the payment was made in a certain currency that the merchant stated he accepted and also if the authentication requirements were fulfilled and correct. Even so, it

is possible, though, for the merchants to charge extra fees if such sums are induced by banks and are not regulated by the European Union's legal rules regarding card payment costs.

As seen, the merchants have the possibility to choose and accept what means of payment they want, what the discrimination refers to regards the citizenship, nationality, domicile or headquarter of the consumer, the location of the payment account and that of the payment service provider, and also the place where the payment instrument was issued.

Regulation 2018/302 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 does not affect the fiscal rules, neither the competition rules.

Also, among its benefits, it was statistically proved that the ban of geo-blocking did offer a wider spectre of products and services for the consumers to choose from, not to mention the combination of merchants and professionals involved, which do not on involve only the trader itself, but also the participation of domestic intermediaries, who ensure the delivery of the goods to the customers (Duch-Brown Néstor, Martens Bertin, 2016).

It is the duty of each member state to nominate a body whose duty is that of making sure the dispositions of the regulation are correctly applied by all the on-line trade participants.

Conclusions

Along time, the European citizens faced all sorts of obstacles in their access to tools and services, from high shipping fees, to limited access to the alternatives of goods and services, despite the constant intention of the European Union to remove all barriers and create a single market.

The system of the European Union did hold an internal battle between the wanted integration at the highest inter-state level and the practices still held at the national level, creating difficult asymmetries. However, the purpose of the internal market was that of keeping a high competition for the market economy (Monti Mario, 1010).

Geo-blocking kept consumers from accessing services in a single country or only a region, due to an ensemble of different legal rules existent at the level of the European Union and its Member States. As such, geo-blocking meant a constant limitation and burden on the economy of the Member States and the European Union as a whole, not to mention a limitation of the full potential of the digital single market.

The burden was both at a macro level, on the economy, but also at a micro level, both on the traders and on the consumers, keeping the latter from benefiting from a wider range of on-line products and services. As it is stated, the „variety effect” is the strongest element for the consumers when analyzing products and catalogues from other countries. Also, for the smaller traders and start-ups especially, the geo-blocking meant fewer places for work and less activities to unfold in a wider area, while also many companies did not benefit from high quality digital services (Alaveras Georgios, Gomez-Herrera Estrella and Martens Bertin, 2017).

The need for the ban of geo-blocking was absolutely impetuous, as statistically was later proved, after only one year from the entering into force of Regulation 2018/302 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, as the purchase of products and services online has almost doubled.

According to a survey taken in 2015 (Eurobarometer 397, 2015), when discussions of a future ban of geo-blocking were held, around 40% of the European Union's consumers were fully trusting the process of online purchasing from sellers located in another European Union's country, while actually only 19% of them were actually making online purchases from one European Union country to another (Lazăr Mihai,, 2018).

On the other hand, at the end of 2019, a year after the application of the geo-blocking Regulation, the number of internet users trying to access electronic content from another European Union country has almost doubled. The most requested types of content accessed from another European Union country are from the audiovisual area – almost 9% of respondents, and music - 8%. The survey operated by the European Commission also indicated an upward trend in this regard, especially among young people, as the percentage of respondents who tried to access these services are mainly aged between 15 and 24 compared to the overall figure (European Commission, 2019).

Therefore, these new European Union's e-commerce rules aim to exploit this potentially significant cross-border demand and create new opportunities for companies. As such, the new measures will continue to remove unjustified obstacles such as redirection to the consumer's website or the requirement to pay with a debit or credit card in a particular country and, as a consequence, online discrimination on grounds of nationality or place of residence will finally reach end.

In conclusion, not only will the consumers be the ones benefiting from the new measures, but also the companies - through ensuring better online access to products and services, reducing the transaction costs and the administrative burden and strengthening the consumers' confidence -, and even the Member States themselves.

Lifting these restrictions also marks an important step in consolidating the digital single market.

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