



Federation of the European
Sporting Goods Industry

FESI POSITION ON GEOBLOCKING

Brussels, 21 March 2017

FEDERATION OF THE EUROPEAN
SPORTING GOODS INDUSTRY

House of Sport

Avenue des Arts 43
1040 Brussels, Belgium
Email: info@fesi-sport.org
Tel: +32 2762 8648
Fax: +32 2771 8746
Website: www.fesi-sport.org

FESI, the Federation of the European Sporting Goods Industry, has followed with great interest the debate on the proposed geo-blocking Regulation.

Ahead of the trilogue negotiations, the sporting goods industry would like to reiterate its concerns over the following elements of the proposed Regulation.

Obligation to deliver

A company should have the freedom to choose its markets. We therefore strongly support that the proposal does not impose an obligation to deliver to the country of the customer if the trader does not wish to operate there. Traders, particularly those serving a limited market within the EU, should remain free, as in the 'physical world' to choose not to sell to a wider market if they do not wish so.

Scope

In order to guarantee freedom of contract, B2B contracts should be excluded from the Regulation which should solely focus on B2C.

Applicable consumer law

Whenever cross-border delivery is not available, there should be legal certainty for manufacturers and traders that if there is a problem with a product, the customer would have the responsibility to bring it back to the shop or pick-up point of the company and could not claim a local after-service support. Traders' rules should apply and sales to customers from Member States not falling within the geographical area where the trader operates or delivers should be considered passive sales.

Re-routing

Practices such as re-routing are not discriminatory per se and should not be banned. The proposal states that where re-routing is allowed by law, the trader shall provide a clear justification. This obligation should not lead to longer or more complex shopping journey as it would increase the chance of consumers abandoning the purchase on-line. Allowing the trader to list the cases when it needs to block access or reroute customers in its general terms and conditions would reduce the burden of this requirement.

Payment

FESI is strongly concerned by the proposal to prevent traders from applying different conditions for payment transactions related to the place of residence. A method of payments could be specific to some Member State. It would thus not be technically feasible to offer the same methods of payment in all the 28 Member States.

Passive sales

As drafted, Article 6 is the door for the Geo-Blocking proposal to modify the long-established EU Competition legal framework as foreseen in TFEU. Article 101 of the TFEU establishes both the competition practices incompatible with the EU internal market, including the agreements between traders on restrictions of passive sales (seller banned from satisfying unsolicited purchasing requests), and the exceptions to the rule. Therefore, consistency, prevalence and legal certainty of current EU Competition rules must be achieved by a reference to Article 101, and not only by referring to Regulation (EU) No 330/2010.

FESI proposal would be to have the following wording:

Provisions of agreements imposing on traders obligations, in respect of passive sales, ~~within the meaning of Regulation (EU) No 330/2010~~, which are not in accordance with Article 101 TFEU or with Regulation (EU) No 330/2010, to act in violation of this Regulation shall be automatically null and void.

Founded in 1960 FESI - the Federation of the European Sporting Goods Industry represents the interests of approximately 1,800 sporting goods manufacturers (85% of the European market) through its 12 National Sporting Goods Industry Federations and its directly affiliated member companies. 70-75% of FESI's membership is made up of Small and Medium Sized Enterprises. In total, the European Sporting Goods Industry employs over 650,000 EU citizens and has an annual turnover of some 66 billion euro.