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[...](2016) XXX draft

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on addressing geo-blocking and other forms of discrimination based on place of
residence or establishment, or nationality within the Single Market**

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

**1. CONTEXT OF THE PROPOSAL
Reasons for and objectives of the proposal**

The Digital Single Market Strategy' adopted in May 2015 and the Single Market Strategy2
adopted in October 2015 announced legislative action to address unjustified geo-blocking and
comprehensively fight discrimination based on nationality or place of residence or
establishment (hereinafter "residence").

The general objective of this proposal is to give customers better access to goods and services
in the Single Market by preventing direct and indirect discrimination by traders artificially
segmenting the market based on customers' residence. Customers experience such differences
in treatment when purchasing online, but also when travelling to other Member States to
purchase goods or services.

Despite the implementation of the non-discrimination principle in Article 20(2) of Directive
2006/123/EC3 ("Services Directive"), customers still face refusals to sell and different
conditions, such as price differences, when buying goods or services. This is mainly due to
uncertainty on what constitutes objective criteria, justifying differences in treatment by traders.
In order to remedy this problem, both traders and customers should have more clarity about
situations where differences in treatment based on residence cannot be justified.

This proposal prohibits the blocking of access to websites and other online interfaces and the
re-routing of customers from one country version to another. It furthermore prohibits
discrimination of customers in four specific cases of the sale of goods and services and does
not allow circumventing such ban of discrimination in passive sales agreements. Both
consumers and business as end users of goods or services are affected by such practices and
should therefore benefit from the rules set out in this proposal. Transactions where goods or
services are purchased by business for resale should, however, be excluded in order to allow
traders to set up their distribution systems in compliance with European competition law.

This proposal does not address pricing and traders remain free to set their prices. It also does
not address dynamic pricing, where traders adapt their offers overtime, depending on a number
of factors, not linked to nationality or residence.

* **Consistency with existing policy provisions in the policy area**

The country of origin principle under Directive 2000/31/EC' ('e-Commerce Directive') has
created the opportunity for traders providing information society services to operate on a cross-
border basis and provide in principle their services on the basis of the rules applicable in their
country of establishment. Furthermore, the Services Directive includes rights for service
recipients and seeks to ensure in its Article 20 that service providers established in the Union
do neither directly nor indirectly treat customers differently on the basis of their nationality or

COM (2015) 192 final.

2 COM (2015) 550 final.

3 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.

4 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.

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place of residence. However, Article 20 has not sufficiently addressed discrimination against
customers and has not reduced legal uncertainty for traders and enforcement bodies. As a
consequence it has been difficult to enforce the non-discrimination rule in practice. This
proposal ensures that in the case of conflict with Article 20(2) of the Services Directive, the
provisions of this Regulation will prevail.

There are also other provisions banning discrimination (including denial of access to websites
or ban of rerouting) based on nationality or place of residence, e.g. in the transport sector. 5

Regarding non-discrimination in the use of payment means, Regulation (EU) No 260/2012
already prohibits traders from requiring bank accounts from a certain Member State for a
payment to be made. Such a principle does not exist for other payment means. Regulation (EU)
2015/71 certainly facilitated the use of credit cards by capping interchange fees for card-based
payments transactions. Directive (EU) 2015/23666 also paved the way for a fully integrated
market for retail payments in the EU. This Regulation takes this a step further and prevents
traders from applying different payment conditions for reasons related to the customer's
residence. It should be recalled, however, that traders are in principle free to decide which
means of payment they accept vis-à-vis local and foreign customers.

* **Consistency with other Union policies**

This proposal complements other initiatives of the Digital Single Market and Single Market
Strategies, with the aim of creating the right conditions for improved access to services for
consumers and businesses across the Union.

These initiatives include the proposals for a 'Directive on certain aspects concerning contracts
for the supply of digital content' and for a 'Directive on certain aspects concerning contracts for
the online and other distance sales of goods'. These proposals aim at establishing maximum
harmonization as regards the issues covered. Once adopted, they will further reduce differences
in the consumer protection legislation of Member States, especially in relation to remedies
consumers enjoy in case of defective goods and digital content.

Furthermore, the proposal for a "Regulation on cross border parcel delivery" aims at enhancing
price transparency and regulatory oversight in that area. Consumers and small business report
that problems with parcel delivery, in particular high prices, prevent them from selling more to
or buying more from other Member States. The review of the "Regulation on Consumer
Protection Cooperation" aims to improve co-operation between national consumer protection
authorities and provide an enhanced cross-border enforcement mechanism for consumer claims.
Both of these initiatives are also scheduled for publication on 25 May 2016. The initiative on
extending the Single Electronic Mechanism for VAT registration, scheduled for December
2016, seeks to further simplify cross-border trading by lessening the burden on traders with
regard to VAT registration and payment.

5 Article 1(a) and Article 4(2) of both Regulation (EU) No 181/2011 concerning the rights of passengers
in bus and coach transport and Regulation (EU) No 1127/2010 concerning the rights of passengers when
by sea and inland waterway regulate the principle of non-discrimination. Article 23(2) and 16(1) of
Regulation (EC) No 1008/2008 on common rules for the operation of air services refer to non­
discrimination in air transport.

6 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on
payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU
and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

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**2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

* **Legal basis**

The proposal is based on Article 114 TFEU. This Article confers on the EU the power to adopt
measures which have as their object the abolishment of the barriers to the free movement of
inter alia goods and services. Efforts made to abolish such barriers can be neutralised by
obstacles raised by private parties, which segment the internal market along national borders.
That is all the more problematic from the viewpoint of the internal market in a situation where
the relevant laws of the Member States are insufficiently clear, uniform and effective in
combatting those obstacles. The proposal therefore addresses practices which hamper the free
movement of goods and services.

* **Subsidiarity (for non-exclusive competence)**

Access to goods and services on a non-discriminatory basis within the internal market is in its
essence an issue of a cross-border nature. EU intervention is necessary to prevent discrimination
based on residence in case of cross-border commercial transactions. Member States' legislative
intervention does not suffice in order to ensure such non-discrimination in cross border
situations. In terms of effectiveness, only an EU intervention can ensure that conditions for
customers' access to goods and services do not vary across the Union. EU action will ensure
greater legal certainty by clarifying in which situations different treatment on the basis of
residence shall be deemed discriminatory and therefore be prohibited.

**Proportionality**

The proposal aims to facilitate access to goods and services across the Union and creates, in
particular, targeted obligations for traders not to discriminate between customers based on
residence under certain specific circumstances. These obligations do not extend beyond what is
necessary to solve the identified problems and are limited to situations defined in the proposal.
The proposal also increases legal certainty for traders by clarifying existing obligations and
specifying under which conditions customers should be treated equally in cross-border
purchases. Moreover, the proposal does not impose on traders any disproportionate costs. Costs
emerging from the proposal mostly consist of one-off adaption costs.

**Choice of the instrument**

While a non-binding instrument such as a recommendation or guidelines could support market
developments in this area, the effectiveness of such instrument is expected to be very limited.
The Commission guidelines on the application of Article 20(2) Service Directive of 8 June 2012
provide clarification also in specific situations, such as those covered by this proposal.
However, Member States have not adapted national laws to provide more concrete rights to
customers and did not step up enforcement.

Hence only a legislative instrument could effectively address the identified problems. A
Regulation is preferred, as being directly applicable in Member States, establishing the same

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level of obligations for private parties, and allowing for the uniform application of rules on non­
discrimination based on residence in all Member States.

**3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER**
**CONSULTATIONS AND IMPACT ASSESSMENTS**

* **Stakeholder consultations**

A large-scale public consultation was conducted from 24 September to 28 December 2015.
Views from consumers, businesses, associations and Member States were sought. 433 replies
were received. The results of the public consultation were published and are also contained in
the Impact Assessment. Furthermore, since the beginning of 2015, the Commission had
extensive discussions with stakeholders (consumers, businesses, consumer and business
associations and national authorities), including through stakeholders workshops, to assess
various options of a possible EU intervention and their impact. On 18 February 2016, the
Commission held a workshop in Amsterdam to discuss the outcome of the public consultation
and possible ways forward.

The majority of consumers and businesses agree that consumers should in principle be able to
purchase and access goods and services from everywhere in the EU. The vast majority of
consumers experienced geo-blocking or other geographically-based restrictions when shopping
in another EU country. The goods and services most affected by geo-blocking are clothing,
footwear and accessories, physical media (books), computer hardware and electronics, airplane
tickets, car rental, digital content such as streaming services, computer games and software, e-
books and MP3s. A majority of consumer and businesses agree that traders should inform
customers about sales restrictions. Consumers expressed support for a policy option requiring
traders to accept cross- border transactions, however without an obligation for them to deliver.
The majority of businesses oppose an obligation to sell and deliver throughout the EU and
emphasize the importance of tailoring prices on different national markets, highlighting the
need to respect their contractual freedom. A large majority of all respondent groups agree that
enforcement of rules and information requirements should be improved.

* **Collection and use of expertise**

The Commission launched a large-scale mystery shopping survey, which analysed
approximately 10,500 websites in the EU and modelled typical cross-border shopping
situations. A Eurobarometer survey from 2016 focusing on B2B relations revealed that firms
as end users of products and services face restrictions similar to those faced by consumers.
Commission services have analysed a large number of complaints related to cross-border
shopping and conducted an evaluation of Article 20 of the Services Directive. In May 2015, the
Commission launched a competition inquiry into the e-commerce sector, and reported its initial
findings in March 2016.8 The Commission has also discussed this initiative with Member States
in expert groups on the Services and the e-Commerce Directives.

7 Synopsis report of the public consultation published here: [https://ec.europa.eu/digital-single-](https://ec.europa.eu/digital-single-market/en/news/full-report-results-public-consultation-geoblocking.)
market/en/news/full-report-results-public-consultation-geoblocking.

8 Initial findings published here:
<http://ec.europa.eu/comnetition/antitrust/sector> inquiries e commerce.html

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* **Impact assessment**

An impact assessment was carried out for this proposa19. On 21 April 2016, the Regulatory
Scrutiny Board issued a positive opinion to the impact assessment. The comments of the RSB
are taken on board in the final Impact Assessment.

The final impact assessment examines five scenarios and comes to the following conclusions:
The option concerning increasing transparency (option 1) was considered, but will not achieve
the objective on its own but needs to be complemented. Increased transparency plus a ban on
blocking access to website (option 2) combined with a consent-based solution banning
automatic rerouting was considered instrumental but it will address only a small part of the
problem. The preferred option (option 3) is to combine these two elements with the definition
of certain specific situations in which geo-discrimination cannot be justified (for tangible goods,
if there is no cross-border delivery by the trader to the Member State of the customer; for
electronically supplied services, including copyright related online content services within the
boundaries of applied licenses; and for services consumed in the trader's premises). Another
option consisted in setting up an additional list of justifications in order to clarify the principles
under Article 20(2) of the Services Directive (option 4), but was discarded due to its complexity.
The last option (option 5), which would require companies to ship tangible goods cross-border,
was discarded because it would impose disproportionate costs on businesses.

* **Regulatory fitness and simplification**

The proposal applies to traders and customers, i.e. consumers and businesses as end users.
These categories include SMEs and also micro-enterprises. Exempting these companies from
the rules could undermine the effectiveness of the measure, as the majority of online trade is
conducted by SMEs, including micro-companies in the Union.

The proposal will have positive effects on competitiveness by improving access to goods and
services within the internal market for consumers and businesses. Regarding international trade,
traders established in third countries are only within the scope of the Regulation to the extent
they already provide services to recipients in the Union. Therefore, the proposal will not have
an impact on international trade.

The proposal concerns the offline and online environment, taking account of new technological
developments where relevant, and is "digital and internet ready".

* **Fundamental rights**

The proposal respects Articles 16 ('freedom to conduct a business') and 17 ('right to property')
of the Charter of Fundamental Rights of the European Union. Traders are already subject to
existing non-discrimination provisions under EU law. Traders can continue to decide where
and when they place offers. Their freedom to refuse a sales request is limited only in line with
the non-discrimination provisions of this Regulation. All other reasons not to sell remain
accepted, e.g. if the product is not on stock anymore.

9 [Insert reference to IA/SWD]

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1. **BUDGETARY IMPLICATIONS**

The proposal has no impact on the European Union budget.

1. **OTHER ELEMENTS**
* **Implementation plans and monitoring, evaluation and reporting arrangements**The Regulation foresees periodic reviews of the impact of the proposal by the Commission.

The Commission will monitor how the Regulation is applied by the market participants across
the Union in order to ensure a consistent approach. It will also focus on the effects of the rules.

* **Detailed explanation of the specific provisions of the proposal**

Article 1 specifies the objective and the scope of the proposal. The material scope of the
proposal is aligned with that of Directive 2006/123/EC to the extent possible in order to ensure
maximum legal certainty for traders and customers. This means that, inter alia, non-economic
services of general interest, transport services, audio-visual services, gambling activities,
healthcare services and certain social services are excluded from the scope of this Regulation.
However, to make this instrument effective in the daily life of citizens, the use of payment
instruments to pay for the purchase of goods and services will be covered by this instrument.
The territorial scope is designed to equally include companies established in the EU and those
established in third countries but providing services to recipients in the Union. Article 1 also
provides certainty to traders who do not intend directing activities to other Member States but
simply comply with this Regulation in respect of the application of foreign consumer law.

Article 2 contains the relevant definitions.

Article 3 establishes the obligations on traders not to prevent access to their online interfaces
on the basis of customers' residence. It also requires the customer's consent for rerouting and
mandates traders to make all versions of their online interfaces easily accessible for customers.
The trader is exempted from these obligations where the access restrictions or rerouting are
required by law. In these exceptional cases the trader has to provide a clear justification by the
appropriate means.

Article 4 sets out four specific situations under which discrimination of customers based on
residence is prohibited. The first situation concerns the selling of physical goods when the trader
is not involved in the delivery of the product to the Member State of the customer. The second
situation concerns the provision of electronically supplied services, while the third situation
concerns the provision of copyright protected electronically supplied services where the trader
has the required rights for the relevant territories. The fourth situation applies to services, which
are provided by the trader in a Member State different from that of the customer's Member State
of residence.

Article 5 provides the non-discrimination rules in payment context beyond what has already
been stated in the 2012 SEPA Regulation in respect of payment via bank accounts.

Article 6 mandates that passive sales' agreements imposed on traders which are in violation of
the provisions of this Regulation are automatically void. It is designed to avoid a circumvention
of the other provisions of this regulation.

Article 7 and 8 set out rules improving the cooperation on enforcement between Member States'
authorities.

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Article 9 requests Member States to assign a competent national body providing practical
assistance for consumers in relation to the obligations laid down in this Regulation.

Article 10 mandates periodic reviews of the application of the Regulation by the Commission.

Article 11 sets out that the provisions of this Regulation should apply six months after its
publication to provide market participants enough time to prepare for the impact of the measure
on their activities.

However, the obligations set out (i) in Article 4 (1)(b) related to electronically supplied services
should apply from 1 July 2018, and (ii) in Article 4 (1)(c) related 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 and the trader has the required rights for the relevant
territories should apply from 1 July 2020.

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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on addressing geo-blocking and other forms of discrimination based on place of
residence or establishment, or nationality within the Single Market**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article
114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committed°,

Having regard to the opinion of the Committee of the Regions',

Acting in accordance with the ordinary legislative procedure,

Whereas:

1. Important steps have already been taken to remove regulatory and administrative
barriers for traders operating across the Union. However, for achieving a genuine
Internal Market, which allows both traders and customers to make full use of its
opportunities, it is necessary to take additional measures.
2. In order to realise the objective of ensuring good functioning of the internal market, as
an area without internal frontiers in which the free movement of inter alia goods and
services is ensured, it is not sufficient to abolish, as between Member States, only State
barriers. Such abolition can be neutralised through obstacles resulting from the exercise
of private parties of their legal autonomy. That occurs where traders block or limit the
access of customers wishing to engage in cross-border commercial transactions to
traders' online applications, such as websites and apps, known as geo-blocking. It also
occurs through other actions by certain traders involving the application of different
general conditions of access to their goods and services with respect to such customers,
both online and offline.
3. In this manner, traders segment the internal market along internal frontiers and hamper
the free movement of goods and services, thus restricting the rights of recipients. This
is an important factor, which contributes to the relatively low level of cross-border
commercial transactions within the union, including in the sector of electronic
commerce, which prevents the full growth potential of the internal market from being
realised.

OJC[...],[...],p.[...].
OJ C [ ...1, [ ...], p.

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1. Pursuant to Directive 2006/123/EC12, Member States are to ensure that service providers
established in the Union do not treat recipients of services differently on the basis of

their nationality or place of residence. However, this provision has not been fully
effective in combatting discrimination and it has not sufficiently reduced legal
uncertainty, particularly because of the possibility to justify the differences in treatment
for which it allows and the corresponding difficulties in enforcing it in practice.
Moreover, geo-blocking and other forms of discrimination based on nationality, place
of residence or place of establishment can also arise as a consequence of actions by
traders established in third countries, which fall outside the scope of that Directive.

1. For the purposes of ensuring the good functioning of the internal market, the targeted
measures set out in this Regulation, which provide for a clear, uniform and effective set
of rules on a selected number of issues, are therefore required.
2. This Regulation aims at preventing discrimination based on customers' nationality,
place of residence or place of establishment, including geo-blocking, in cross-border
commercial transactions between traders and customers relating to the sales of goods
and the provision of services within the Union. It seeks to address direct as well as
indirect discrimination, thus also covering unjustified differences of treatment on the
basis of other distinguishing criteria which lead to the same result as the application of
criteria directly based on nationality, place of residence or place of establishment. Such
other criteria can be applied, in particular, on the basis of information indicating the
physical location of customers, such as the **IP** address used when accessing an online
interface, the address submitted for the delivery of goods, the choice language made or
the Member State where the customer's payment instrument has been issued.
3. The effects for customers and on the internal market of discriminatory treatment in
connection to commercial transactions relating to the sales of goods or the provision of
services within the Union are the same, regardless of whether a trader is established in
a Member State or in a third country. Therefore, and with a view to ensuring that
competing traders are subject to the same requirements in this regard, the measures set
out in this Regulation should apply equally to all traders operating within the Union.
4. Both consumers and undertakings should be safeguarded from discrimination for
reasons related to their nationality, place of residence or place of establishment when
acting as customers for the purposes of this Regulation. However, that protection should
not extend to customers purchasing a good or a service for resale, because it would affect
widely used distribution schemes between undertakings in a business to business
context, such as selective and exclusive distribution, which generally allow for
manufacturers to select their retailers. These distribution systems are implemented
through vertical agreements between undertakings which fall under competition law and
should therefore not be covered by this Regulation.
5. Nevertheless, traders are not only prevented for objective reasons to trade and offer
services or goods to customers in other countries. They also decide for purely
commercial reasons to deny consumers from abroad access to products or services
offered to local customers, including certain online contents services, or to charge them
higher prices without any valid reason. This leads to artificial market segmentation to
the detriment of customers interested to benefit from a wider choice in the Single
Market. Clarifying situations in cross-border commercial relations, where the

12 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services
in the internal market.

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discriminatory treatment of non-nationals cannot be justified by objective criteria will
bring legal certainty for all participants of cross-border transactions.

1. Traders can make available their general conditions of access to goods or services to the
public at large through various means, such as information published in advertisements,
on websites or in (pre-) contractual documentation. Such conditions are understood to
apply in the absence of an individually negotiated agreement to the contrary entered into
directly with the customer.
2. The measures laid down in this Regulation should apply to services including the sale
of goods provided by traders, which also include intermediaries acting in the name or
on behalf of other companies, regardless of the technology or means used to place the
order or access the market.
3. Considering that some regulatory and administrative barriers for traders have been
removed across the Union in certain services sectors as a result of the implementation
of Directive 2006/123/EC, in terms of material scope, consistency should be ensured
between this Regulation and Directive 2006/123/EC. Audio-visual services, including
services the main feature of which is the provision of access to broadcasts of sports
events and which are provided on the basis of exclusive territorial licenses, are therefore
excluded from the scope of this Regulation. In contrast electronic communications
services which are subject to specific Union law but not to Directive 2006/123/EC,
should fall within the scope of this Regulation.
4. Discrimination can also occur in relation to services in the field of transport, in particular
with respect to the sales of tickets for the transport of passengers. However, in that
regard Regulation (EC) No 1008/2008 of the European Parliament and of the Council
on common rules for the operation of air services in the Community, Regulation (EU)
No 1177/2010 of the European Parliament and of the Council concerning the rights of
passengers when travelling by sea and inland waterway and amending Regulation (EC)
N° 2006/2004 and Regulation (EU) No 181/2011 of the European Parliament and of the
Council on the rights of passengers in bus and coach transport and amending Regulation
(EC) N° 2006/2004 already contain broad prohibitions of discriminations covering all
discriminatory practices that the present Regulation seeks to address, whereas it is
intended that Regulation (EC) No 1371/2007 of the European Parliament and of the
Council on rail passenger rights and obligations will be amended to that effect in the
coming period. Therefore, and in order to ensure consistency with the scope of
application of Directive 2006/123/EC, services in the field of transport should remain
outside the scope of the present Regulation.
5. Access to retail financial services, including payment services, should be excluded from
the scope of this Regulation. However, in case of electronic transactions by credit
transfer, direct debit or by a card-based instrument for which the trader can request
strong customer authentication by the customer and the payments are in a currency that
the trader accepts, a trader should not apply different payment conditions including
refusing a transaction for reasons related to nationality, place of residence or place of
establishment of the customer.
6. This Regulation should be without prejudice to the rules applicable in the field of
taxation, given that the Treaty provides specific base for action at EU level as regards
taxation matters.
7. The discrimination at issue here typically takes place through general terms and
conditions that are set and applied by or on behalf of the trader concerned, as a

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precondition for obtaining access to his or her goods or services in question, and that
are made available to the public at large. Such general conditions of access include inter
alia prices, payment conditions and delivery conditions. They can be made available to
the public at large through various means, such as information published in
advertisements, on websites or (pre-) contractual documentation. However, terms and
conditions that are individually negotiated between the trader and the customers should
not be considered general conditions of access for the purposes of this Regulation.

1. In order to increase the possibility for customers to access information related to the
sales of goods and the provision of services on the internal market and to increase
transparency, including with respect to prices, traders should not, through the use of
technological measures or otherwise, prevent customers from having full and equal
access to online interfaces on the basis of the nationality, place of residence or place of
establishment of a customer, who seeks to access such an online interface. Such
technological measures can encompass, in particular, any technologies used to
determine the physical location of the customer, including the tracking of that by means
of IP address, coordinates obtained through a global navigation satellite system or data
related to a payment transaction. Traders should be obliged to give access to online
interfaces and equally display commercial offerings on the Internet regardless of the
physical location of the customer; however, it does not create an obligation to engage in
a commercial transaction with the customer.
2. Certain traders operate different versions of their online interfaces, targeting customers
from different Member States. While this should remain possible, redirect a customer
from one version of the online interface to such other version without his or her explicit
consent should be prohibited. Once a customer has given his or her explicit consent,
traders should not repeatedly have to ask for such consent of that particular customer in
relation to that particular online interface. However, all versions of the online interface
should remain easily accessible to the customer at all times.
3. In certain cases, blocking, limiting of access or redirection without the customer's
consent to an alternative version of an online interface for reasons related to the
customer's nationality, place or residence or place of establishment might be necessary
in order to ensure compliance with a legal requirement in Union law or in the law of
Member States in accordance with Union law. Such laws may limit customers' access
to certain goods or services, such as the prohibition to display specific content in certain
Member States. Traders should not be prevented from complying with such
requirements and thus be able to limit access to an online interface, in as far as that is
necessary for that reason. Online advertisement targeted to specific markets within the
Union should not be covered by prohibitions of rerouting or denial of access to
information under this Regulation. [In order for customers to be informed and in a
position to complain or seek redress where necessary, without imposing excessive
burdens on traders, traders should be required to provide justifications where they block,
limit the access of or redirect customers pursuant to such laws, without a request to this
effect being required. That requirement to provide justifications should apply as a
complement to the information requirements for traders regarding delivery restrictions
that may apply and means of payments that are accepted pursuant to Directive
2011/83/EU.]
4. In a number of specific situations, any differences in the treatment through the
application of general conditions of access of customers for reasons related to their
nationality, place of residence or place of establishment cannot be objectively justified.
In those situations, customers should be entitled, under the specific conditions laid down

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in this Regulation, to shop under the same terms and conditions as a local customer and
have full equal access to any of the different offers, irrespective of their nationality,
place of residence or place of establishment. However, also in those situations traders
should remain free to direct their activities at different Member States or groups of
customers with targeted offers and differing terms and conditions, including through the
setting-up of country-specific online interfaces. In certain cases, different terms and
conditions of access for reasons related to the nationality, place of residence or place of
establishment of the customer might be necessary in order to comply with a specific
prohibition or a requirements laid down in Union law or in the law of Member States in
accordance with Union law which prevents a trader from selling the goods or providing
the services to certain customers or oblige them to apply different conditions of access.
Such as prohibitions to sell alcohol or tobacco in certain Member States. Traders should
not be prevented from complying with such prohibitions or requirements. Furthermore,
in line with case C-388/01 of the European Court of Justice, this Regulation should not
prevent traders from applying different conditions of access to a service on the basis of
a customer's nationality or place of residence if there is a direct link between the trader's
application of preferential rates and the taxation paid by the customer and if it is
necessary to preserve the cohesion of the tax system.

1. The first of the situations which cannot be objectively justified is where the trader sells
goods and there is no cross-border delivery of those goods to the Member State where
the customer resides by or on behalf of the trader. If the customer is willing to pick up
the product in the country of the trader or a different Member State to which the trader
delivers or arrange for the cross-border part of the delivery, he or she should be able to
purchase goods, such as electronics, computer hardware, cosmetics and electrical
household appliances, under the same conditions of access including price as residents
of the country of the trader. In this situation, the trader does not have to register for VAT
in another Member State or arrange for cross-border delivery.
2. The second situation is where the trader provides electronically supplied services
Examples of such services include cloud services, data warehousing services, website
hosting and the provision of firewalls. The third situation covers services the main
feature of which is the provision of access to and use of copyright protected works or
other protected subject matter, provided that the trader has the required rights for the
relevant territories (such as e-books, music, games and software). In those cases, no
physical delivery is required. The trader can declare and pay VAT in a simplified
manner according to the VAT Mini-One-Stop-Shop (MOSS) rules.
3. Finally, in the situation where the trader provides services and those services are
received by the customer in a Member State, different from the Member State of which
the customer is a national or in which the customer has his or her place of residence or
place of establishment, differences in treatment based on such criteria should not be
justified. Customers should regardless of their nationality, place of residence or place of
establishment access offers provided by the trader. These situations concern services
such as hotel accommodation, sport events, car renting, music festivals and leisure
parks. In these situations, the trader does not have to register for VAT in another
Member State or arrange for cross-border delivery.
4. Pursuant to Regulation (EC) No 593/2008 on the law applicable to contractual
obligations (Rome I), the choice of law applicable to contracts between a consumer and
a professional who pursues his commercial or professional activities in the country
where the consumer has his habitual residence or, by any means, directs such activities
to that country or to several countries including that country, may not have the result of

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depriving the consumer of the protection afforded to him by provisions that cannot be
derogated from by agreement by virtue of the law of the country where the consumer
has his habitual residence. Pursuant to Regulation (EU) 1215/2012 on jurisdiction and
the recognition and enforcement of judgement in civil and commercial matters, in
matters related to a contract between a consumer and a professional who is domiciled
in a Member State and pursues commercial or professional activities in the Member
State of the consumer's domicile or, by any means, directs such activities to that Member
State or to several States including that Member State, a consumer may bring
proceedings against the other party in the courts of the Member State where he is
domiciled and proceedings may be brought against the consumer only in those courts.
Thus, where a trader does not pursue his activities in the Member State of the consumer
or does not direct his activities there, or where the customer is not a consumer, the trader
does not incur any additional costs associated with jurisdiction or differences in
applicable law. Where, in contrast, a trader does pursue his activities in the consumer's
Member State or does direct his activities there, the trader has manifested its intention
to establish commercial relations with consumers from that Member State and thus been
able to take account of any such costs.

1. This Regulation should not affect acts of Union law concerning judicial cooperation in
civil matters, notably the provisions on the law applicable to contractual obligations and
on jurisdiction set out in Regulations (EC) No 593/2008 and (EU) 1215/2012, including
the application of those acts and provisions in individual cases. In particular, the mere
fact that a trader acts in accordance with the provisions of this Regulation should not be
construed as implying that he directs his activities to the consumer's Member State for
the purpose of such application.
2. In light of the existing framework for credit transfers and direct debits in euro, also for
payment cards for which interchange fees have been capped, there are no objective
criteria for traders to use payment instruments to differentiate between national and non-
national customers. Therefore, the fact that a payment instrument originates from a
Member State different from that of the trader or the payee, should not constitute a basis
for the refusal of such payment instrument. The provisions on non-discrimination in
payments should not be limited to the situations set out in Article 4 of this Regulation.
3. This Regulation should not affect the application of the rules on competition, and in
particular Articles 101 and 102 TFEU. Agreements imposing on traders obligations not
to engage in passive sales within the meaning of Commission Regulation (EU) No
330/2010 to certain customers or to customers in certain territories are generally
considered restrictive of competition and cannot normally be exempted from the
prohibition laid down in Article 101(1) TFEU. Even when they are not caught by Article
101 TFEU, in the context of the scope of the application of this Regulation, they disrupt
the proper functioning of the internal market and they may be used to circumvent the
provisions of this Regulation. The relevant provisions of such agreements and of other
agreements requiring the trader to act in violation of the provisions of this Regulation
in respect of passive sales, should therefore be automatically void. However, this
Regulation, and in particular its provisions on access to goods or services, should not
affect agreements restricting active sales within the meaning of Commission Regulation
(EU) No 330/2010.
4. Member States should designate a body or bodies responsible for taking effective action
to monitor and to secure compliance with the provision of this Regulation. Member
States should also ensure that effective financial or administrative penalties can be
imposed on traders in the event of any breach of this Regulation.

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1. With a view to facilitating the effective enforcement of the rules laid down in this
Regulation, the mechanisms to ensure cross-border cooperation among competent
authorities provided for in Regulation (EC) 2006/2004 of the European Parliament and
of the Council and should also be available in relation to those rules. However, as
Regulation (EC) 2006/2004 only applies with respect to laws that protect consumers'
interests, those measures should be available only when the customer is a consumer.
Regulation (EC) 2006/2004 should therefore be amended.
2. Traders, public authorities and other interested parties should have sufficient time to
adapt to, and ensure compliance with, the provisions of this Regulation. In light of the
particular characteristics of electronically supplied services, and in particular of such
services the main feature of which is the provision of access to and use of copyright
protected works or other protected subject matter, provided that the trader has the
required rights for the relevant territories, it is appropriate to apply the prohibitions of
Article 4 only from a later date. [To be considered whether the contract proposal should
be mentioned here expressly as a reason.]
3. In order to achieve the objective of effectively addressing discrimination based on the
nationality, place of residence or place of establishment of customers, it is appropriate
to adopt a Regulation, which directly applies in all Member States. This is necessary in
order to guarantee the uniform application of the non-discrimination rules set out in this
Regulation across the Union and their entering into force at the same time. Only a
Regulation ensures the degree of clarity, uniformity and legal certainty which is
necessary in order to enable customers to fully benefit from those rules.
4. Since the objective of this Regulation, namely the prevention of direct and indirect
discrimination based on nationality, place of residence or place of establishment of
customers, including geo-blocking, in commercial transactions with traders within the
Union, cannot be sufficiently achieved by Member States and can therefore, by reason
of its scale and effects, be better achieved at Union level, the Union may adopt measures
in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on
European Union. In accordance with the principle of proportionality, as set out in that
Article, this Regulation does not go beyond what is necessary in order to achieve its
objective.
5. This Regulation respects fundamental rights and observes the principle recognised in
particular by the Charter of Fundamental Rights of the European Union and specifically
Articles 16 and 17 thereof.

HAVE ADOPTED THIS REGULATION:

|  |  |  |
| --- | --- | --- |
|  | *Article 1*Objective and scopeThis Regulation seeks to contribute to the proper functioning of the internal market by preventing discrimination based, directly or indirectly, on the nationality, place of residence or place of establishment of customers.This Regulation addresses the relations between traders and customers before, during and after the conclusion of a contract regarding the sale of goods and the provision of services supplied in any Member State within the territory of the European Union.This Regulation shall apply in the following situations:15 | **EN** |

1. where the trader seeks to or sells goods or provides services in a Member State other
than the Member State in which the customer has his or her place of residence or place
of establishment;
2. where the trader seeks or sells goods or provides services in the same Member State
as the one in which the customer has his or her place of residence or place of
establishment, but the customer is a national of another Member State;
3. where the trader seeks or sell goods or provide services in a Member State other than
the Member State in which the customer is temporarily located without residing in that
Member State or has its place of establishment in that Member State.
4. This Regulation shall not apply to activities referred to in Article 2(2) of Directive
2006/123/EC
5. This Regulation shall be without prejudice to the rules applicable to the field of
taxation.
6. This Regulation shall not affect acts of Union law concerning judicial cooperation in
civil matters. Compliance with this Regulation shall not be construed as implying that
a trader directs his activities to the Member State where the consumer has his habitual
residence or domicile within the meaning of Article 6(1)(b) of Regulation (EC) No
593/2008 and Article 17(1)(c) of Regulation (EU) 1215/2012.
7. Insofar as the provisions of this Regulation conflict with the provisions of Article 20
(2) of Directive (EU) 2006/123, the provision of this Regulation shall prevail.

*Article 2*

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'card-based payment instrument' means a payment instrument as defined in Article 2
(20) of Regulation (EU) 2015/751;
2. 'credit transfer' means a payment service as defined in Article 4 (24) of Directive (EU)
2015/2366;
3. 'consumer' means any natural person who is acting for purposes which are outside his
or her trade, business, craft or profession;
4. 'customer' means a consumer who, or an undertaking which, is a national of a Member
State or has his or her place of residence or place of establishment in a Member State,
and intends to purchase or purchases a good or a service within the Union, other than
for resale;
5. 'direct debit' means a payment service as defined in Article 4 (23) of Directive (EU)
2015/2366;
6. 'electronically supplied services' means the services referred to in Article 7 of Council
Implementing Regulation (EU) No 282/2011;
7. 'general conditions of access' means all terms and conditions and all other information
made available to the public at large, including sale prices, by the trader through
various means such as information published in advertisements, on websites or in (pre­
) contractual documentation and which are understood to apply in the absence of an
agreement to the contrary entered into directly with the service recipient;

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1. 'goods' means any tangible movable item as defined in Article 2 (3) of Directive (EU)
2011/83;
2. 'online interface' means any software, including a website and applications, operated
by or on behalf of a trader, which serves to give customers access to the trader's goods
or services with a view to engaging in a commercial transaction;
3. 'payee' means a natural or legal person as defined in point 9 of Article 4 of Directive
(EU) 2015/2366;
4. 'payer' means a natural or legal person as defined in point 8 of Article 4 of Directive
(EU) 2015/2366;
5. 'payment account' means an account as defined in point 12 of Article 4 of Directive
(EU) 2015/2366;
6. 'payment instrument' means a personalised device and/or set of procedures as defined
in point 14 of Article 4 of Directive (EU) 2015/2366;
7. 'payment service provider' means a body or natural or legal person as defined in point
11 of Article 4 of Directive (EU) 2015/2366;
8. 'service' means any self-employed economic activity, normally provided for
remuneration, as referred to in Article 57 of the Treaty;
9. 'trader' means any natural or legal person, irrespective of whether privately or publicly
owned, who is acting, including through any other person acting in his/her name or on
his/her behalf, for purposes relating to his/her trade, business, craft or profession.

*Article* 3

Access to online interfaces

1. Traders shall not, through the use of technological measures or otherwise, block or
limit customers' access to their online interface for reasons relating to the nationality,
place of residence or place of establishment of the customer.
2. Traders shall not, for reasons relating to the nationality, place of residence or place of
establishment of the customer, redirect customers to a version of their online interface
that is different from the online interface which the customer originally sought to
access, by virtue of its layout, use of language or other characteristics that make it
specific to customers with a particular nationality, place of residence or place
establishment, unless the customer's gives its explicit consent prior to such redirection.
3. In the event of such redirection with the customer's explicit consent, the original
version of the online interface shall remain easily accessible for that customer.
4. The prohibitions set out in paragraphs 1 and 2 shall not apply where the blocking,
limitation of access or redirection with respect to certain customers is necessary in
order to ensure compliance with a legal requirement in Union law or in the law of
Member States in accordance with Union law.
5. [Where a trader blocks or limits access of customers to an online interface or redirects
customers to a different version of the online interface in compliance with the first
subparagraph, he shall provide a clear justification. That justification shall be given in
the language of the online interface that the customer originally sought to access.]

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*Article 4*

Access to goods or services

(1) Traders shall not apply different general conditions of access to their goods or services,
for reasons related to the nationality, place of residence or place of establishment of
the customer, in the following situations:

1. where the trader sells goods and there is no cross-border delivery of those goods to the
Member State of the customer by or on behalf of the trader;
2. where the trader provides electronically supplied services, other than services the main
feature of which is the provision of access to and use of copyright protected works or
other protected subject matter;
3. where the trader provides 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 and the trader has the required rights for the relevant territories;
4. where the trader provides services and those services are received by the customer in
a Member State, different from the Member State of which the customer is a national
or in which the customer has his place of residence or place of establishment.

(2) The prohibition set out in paragraph 1 shall not apply where a specific prohibition or
a requirement laid down in Union law or in the law of Member States in accordance
with Union law prevents the trader from selling the goods or providing the services to
certain customers.

*Article 5*

Non-discrimination in payments

1. Traders shall not, for reasons related to the nationality, place of residence or place of
establishment of the customer, apply different payment conditions for any sales of
goods or provision of services, where those payments are made through electronic
transactions by credit transfer, direct debit or a card-based payment instrument for
which the payee can request strong customer authentication by the payer pursuant to
the Directive (EU) 2015/2366 and the payments are in a currency that the payee
accepts.
2. The prohibition set out in paragraph 1 shall not apply to commercial cards as defined
in Regulation (EU) 2015/751.

*Article 6*

Agreements on passive sales

Agreements imposing on traders obligations, in respect of passive sales, to act in violation of
the provisions of this Regulation shall be automatically void.

*Article* 7

Enforcement by Member State authorities and administrative cooperation

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1. Each Member State shall designate a body or bodies responsible for the enforcement
of this Regulation. Member States shall ensure that adequate and effective means exist
with the body or bodies designated in order to enforce compliance with the provisions
of this Regulation in the interest of customers.
2. Member States shall lay down the rules on the penalties applicable for infringements
of the provisions of this Regulation and shall take all measures necessary to ensure
that they are implemented. The penalties provided for shall be effective, proportionate
and dissuasive.

*Article 8*

Defence of collective interest of consumers

1. The following point shall be inserted in the Annex to Regulation (EC) No 2006/2004:
"x. Regulation No. XXXX/Year of the European Parliament and of the Council of XX
Month Year on addressing geo-blocking and other forms of discrimination based on
place of residence or establishment, or nationality within the Single Market (OJ L XX,
XX.XX.Year, p. X), only when the customer is a consumer within the meaning of
Article 2(3) of Regulation No XXXX/Year."
2. The following point shall be inserted in the Annex to Directive 2009/22/EC:"x.
Regulation No. XXXX/Year of the European Parliament and of the Council of XX
Month Year on addressing geo-blocking and other forms of discrimination based on
place of residence or establishment, or nationality within the Single Market (OJ L XX,
XX.XX.Year, p. X), only when the customer is a consumer within the meaning of
Article 2(3) of Regulation No XXXX/Year."

*Article 9*

Assistance to consumers

1. Each Member State shall confer responsibility for providing practical assistance to
consumers to a body or bodies in case of a dispute between a consumer and a trader
arising from the application of this Regulation. Assistance to consumers
2. The bodies referred to in paragraph 1 shall offer consumers a uniform model form to
file complaints to the bodies referred to in paragraph 1 and in Article 7(1). The
Commission shall, by [date: *nine months following the day of its publication],* develop
this uniform model form, in cooperation with the bodies referred to in paragraph 1.

*Article 10*Review clause

Three years after the entry into force of this Regulation the Commission shall present to the
European Parliament, the Council and the European Economic and Social Committee an
interim evaluation of the Regulation. The report shall be accompanied where necessary by a
proposal for the amendment of this Regulation in light of legal, technical or economic
developments.

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10 years after the entry into force of this Regulation, and every five years thereafter, the
Commission shall present to the European Parliament, the Council and the European Economic
and Social Committee a full evaluation of the Regulation, in order to measure the impact of the
Regulation and its added value.

*Article 11*

Final provisions

This Regulation shall enter into force on the twentieth day following that of its publication in
the *Official Journal of the European Union.*

It shall apply from *[date: six months following the day of its publication] .*However,

1. Article 4(1)(b) shall apply from 1 July 2018.
2. Article 4(1)(c) shall apply from 1 July 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels,

*For the European Parliament For the Council*

*The President The President*

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