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[1] Text with EEA relevance.

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Legislative acts)

REGULATIONS

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

(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 Committee ([1]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) In order to realise the full potential 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, between Member States, State barriers alone. Such abolition can be undermined by private parties putting in place obstacles inconsistent with internal market freedoms. That occurs where traders operating in one Member State block or limit access to their online interfaces, such as websites and apps, by customers from other Member States wishing to engage in cross-border transactions (a practice known as 'geo-blocking'). It also occurs when certain traders apply different general conditions of access to their goods and services with respect to such customers from other Member States, both online and offline. Although such different treatment might, in some cases, be objectively justified, in other cases, some traders' practices deny or limit access to goods or services by customers wishing to engage in cross-border transactions, or some traders apply in this regard different general conditions of access, which are not objectively justified.

(2) There are different underlying reasons why companies, and in particular microenterprises and small and medium-sized enterprises (SMEs), apply different general conditions of access. In many cases, divergent legal environments, the legal uncertainty involved, the associated risks as regards the applicable consumer protection laws, the environmental or labelling laws, taxation and fiscal issues, delivery costs or language requirements, contribute to traders' unwillingness to engage in commercial relations with customers from other Member States. In other

([1]) OJ C 34, 2.2.2017, p. 93.
([2]) Position of the European Parliament of 6 February 2018 (not yet published in the Official Journal) and decision of the Council of 27 February 2018.

cases, traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thereby restricting the rights of customers and preventing them from benefitting from a wider choice and optimal conditions. Such discriminatory practices are an important factor contributing to the relatively low level of cross-border transactions within the Union, including in the sector of electronic commerce, which prevents the full growth potential of the internal market from being realised. Hence, this Regulation should clarify the situations in which there can be no justification for different treatment of this kind, thereby bringing clarity and legal certainty for all participants in cross-border transactions and ensuring that rules on non-discrimination can be effectively applied and enforced across the internal market. Removing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment could foster growth and increase consumer choice throughout the internal market.

(3) This Regulation aims to address unjustified geo-blocking by removing certain barriers to the functioning of the internal market. However, account needs to be taken of the fact that many differences in Member States' legislation, such as those resulting in different national standards or a lack of mutual recognition or harmonisation at Union level, still constitute significant barriers to cross-border trade. Those barriers continue to cause fragmentation of the internal market, often leading traders to engage in geo-blocking practices. The European Parliament, the Council and the Commission should therefore continue to address those barriers with a view to reducing market fragmentation and to completing the internal market.

(4) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council [1], 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, that provision has not been fully effective in combatting discrimination and it has not sufficiently reduced legal uncertainty. This Regulation aims to further clarify Article 20 of Directive 2006/123/EC by defining certain situations where different treatment based on nationality, place of residence or place of establishment cannot be justified under that provision. However, insofar as this Regulation conflicts with the provisions of Directive 2006/123/EC, this Regulation should prevail. Moreover, unjustified 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.

(5) For the purposes of ensuring the good functioning of the internal market and fostering access to, and the free movement of, goods and services across the Union without discrimination based on nationality, place of residence or place of establishment, 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. Those measures should aim to widen customer choice and access to goods and services, whilst taking due account of traders' freedom to organise their commercial policy in accordance with Union and national law.

(6) This Regulation aims to prevent discrimination based on customers' nationality, place of residence or place of establishment, including unjustified geo-blocking, in cross-border transactions between a trader and a customer 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, it also seeks to cover 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 customers' nationality or place of residence, regardless of whether the customer concerned is present, permanently or on a temporary basis, in another Member State, 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 of language made or the Member State where the customer's payment instrument has been issued.

(7) This Regulation should not apply to situations which are purely internal to a Member State where all the relevant elements of the transaction are confined to a single Member State, in particular the nationality, the place of residence or the place of establishment of the customer or of the trader, the place of execution, the means of payment used in the transaction or the offer, as well as the use of an online interface.

(8) Some regulatory and administrative barriers for traders have been removed across the Union in certain service sectors as a result of the implementation of Directive 2006/123/EC. Consequently, in terms of its material scope,

[1] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

consistency should be ensured between this Regulation and Directive 2006/123/EC. Accordingly, this Regulation should apply, inter alia, to non-audiovisual 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, subject, however, to the specific exclusion and the subsequent evaluation of that exclusion for which this Regulation provides. Audiovisual services, including services the principle purpose of which is the provision of access to broadcasts of sports events and which are provided on the basis of exclusive territorial licenses, are excluded from the scope of this Regulation. Access to retail financial services, including payment services, should therefore also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments.

(9) 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 Regulations (EC) No 1008/2008 ([1]), (EU) No 1177/2010 ([2]) and (EU) No 181/2011 ([3]) of the European Parliament and of the Council already contain broad prohibitions of discrimination covering all discriminatory practices that this Regulation seeks to address. Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council ([4]) will be amended to that effect in the near future. 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 this Regulation.

(10) Where a trader offers a bundle that combines several services or a bundle of goods combined with services, and one or more of those services would, if offered on an individual basis, fall within the scope of this Regulation while another service or services would not, that trader should either comply with the prohibitions set in this Regulation as regards the whole bundle, or at least offer, on an individual basis, services that fall within the scope of this Regulation, if those services are offered to customers by the same trader on an individual basis. Where a trader provides a service or a good on an individual basis outside a bundle, the trader should remain free to decide the price to be applied to such a service or a good outside a bundle in so far as the trader does not apply different pricing for reasons related to nationality, place of residence or place of establishment.

(11) This Regulation should be without prejudice to the rules applicable in the field of taxation, given that the Treaty on the Functioning of the European Union (TFEU) provides specific base for action at Union level as regards taxation matters.

(12) Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council ([5]), the choice of law applicable to contracts between a consumer and a professional who pursues commercial or professional activities in the country of the consumer's habitual residence, or who, by any means, directs such activities to that country or to several countries including that country, may not have the result of depriving the consumer of the protection afforded by provisions that cannot, by virtue of the law of the country of the consumer's habitual residence, be derogated from by agreement. Pursuant to Regulation (EU) No 1215/2012 of the European Parliament and of the Council ([6]), in matters related to a contract between a consumer and a person who pursues commercial or professional activities in the Member State of the consumer's domicile or who, 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 the consumer is domiciled and proceedings may be brought against the consumer only in those courts.

(13) This Regulation should be without prejudice to Union law concerning judicial cooperation in civil matters, and in particular the provisions on the law applicable to contractual obligations and on court jurisdiction set out in Regulations (EC) No 593/2008 and (EU) No 1215/2012. In particular, the mere fact that a trader complies with

([1]) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).
([2]) Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).
([3]) Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).
([4]) Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).
([5]) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).
([6]) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

this Regulation should not be construed as implying that a trader directs activities to the consumer's Member State within the meaning of point (b) of Article 6(1) of Regulation (EC) No 593/2008, and of point (c) of Article 17(1) of Regulation (EU) No 1215/2012. Therefore, the mere fact that the trader does not block or limit access to an online interface by consumers from another Member State, does not apply different general conditions of access in the cases laid down in this Regulation or does not apply different conditions for payment transactions within the range of means of payment accepted, should not, on its own, be considered as 'directing the trader's activities to the consumer's Member State' for the purpose of the determination of the applicable law and jurisdiction. Nor should a trader, on those grounds alone, be considered to be directing activities to the Member State of the consumer's habitual residence or domicile, where the trader provides information and assistance to the consumer subsequent to the conclusion of the contract that has resulted from the trader's compliance with this Regulation.

(14) As regards the meaning and application of the concept of 'electronically supplied services' as defined in this Regulation, it is important to provide legal certainty and ensure consistency with Union law relating to the value-added tax (VAT), which allows the trader to declare and pay VAT in a simplified manner via a VAT Mini-One-Stop-Shop (MOSS) in accordance with the rules on special scheme for non-established taxable persons set out in Council Directive 2006/112/EC [1] and Council Implementing Regulation (EU) No 282/2011 [2]. Due to rapid technological and commercial developments, the concept of electronically supplied services should be defined in a technology-neutral manner by referring to the main characteristics of such services in a way that is consistent with the definition provided for in Article 7(1) of Implementing Regulation (EU) No 282/2011. Accordingly, when interpreting and applying that definition, due account should be taken of the further specifications included in Annex II to Directive 2006/112/EC and in Article 7(2) and (3) of, and Annex I to, Implementing Regulation (EU) No 282/2011, in as far as the services listed in those provisions fall within the scope of this Regulation.

(15) The discriminatory practices that this Regulation seeks to address typically take place by means of general terms, conditions and other information set and applied by or on behalf of the trader concerned, as a precondition for obtaining access to the goods or services in question, 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 by or on behalf of the trader through various means, such as information published in advertisements, on websites or pre-contractual or contractual documentation. Such general conditions of access apply in the absence of an individually negotiated agreement to the contrary entered into directly between the trader and the customer. Terms and conditions that are individually negotiated between the trader and the customers should not be considered to be general conditions of access for the purposes of this Regulation.

(16) When purchasing goods or services as end-users under general conditions of access, consumers and undertakings, in particular microenterprises and SMEs, are often in a similar position. Hence, both consumers and undertakings should be protected against 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 subsequent resale, transformation, processing, renting or subcontracting because that would affect widely used distribution schemes between undertakings in a business to business context, which are often negotiated bilaterally and directly linked to the commercial strategies, both downstream and upstream. Examples of such schemes include selective and exclusive distribution, which generally allow for manufacturers to select their retailers, subject to compliance with the rules on competition. This Regulation should, therefore, be without prejudice to non-discriminatory practices of traders limiting transactions or repetitive transactions, in order to prevent undertakings from purchasing quantities exceeding their internal needs, taking due account of the size of the undertakings, with a view to identifying whether the purchase is for end use only.

(17) The effects for customers and on the internal market of discriminatory treatment in connection to 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, this Regulation should apply equally to all traders, including online marketplaces, operating within the Union.

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[1] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

[2] Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

(18) In order to increase the ability of customers to access information related to the sales of goods and the provision of services within 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, including in the form of mobile applications, based on their nationality, place of residence or place of establishment. Technological measures to prevent such access can encompass, in particular, any technologies used to determine the physical location of the customer, including the tracking of that location by means of an IP address or coordinates obtained through a global navigation satellite system. However, the prohibition of discrimination with respect to access to online interfaces should not be understood as creating an obligation for the trader to engage in transactions with customers.

(19) In order to ensure the equal treatment of customers and to avoid discrimination, as required by this Regulation, traders should not design their online interface, or apply technological means, in a way that would, in practice, not allow customers from other Member States to easily complete their orders.

(20) Certain traders operate different versions of their online interfaces, targeting customers from different Member States. While this should remain possible, redirecting customers from one version of the online interface to another version without their explicit consent should be prohibited. Traders should not be under the obligation to require a customer's explicit consent each time that customer visits the same online interface. Once the customer's explicit consent has been given, including by expressing a preference that applies to a personal account, that explicit consent should be deemed to be valid for all subsequent visits of the same customer to the same online interface. It should be possible for the customer to withdraw such consent at any point in time. All versions of the online interface should remain easily accessible to the customer at all times.

(21) In certain cases, blocking or limiting access, or redirection without the customer's explicit consent to an alternative version of an online interface for reasons related to the customer's nationality, place of residence or place of establishment might be necessary in order to ensure compliance with a legal requirement laid down in Union law, or in the laws of a Member State in accordance with Union law, to which the trader is subject as a consequence of operating in that Member State. Such laws can limit customers' access to certain goods or services, for instance by prohibiting the display of specific content in certain Member States. Traders should not be prevented from complying with such requirements and should thus be able to block or limit access, or redirect certain customers or customers in certain territories to an online interface, insofar as this is necessary for that reason. Nothing in this Regulation is intended to restrict the freedom of expression and the freedom and pluralism of the media, including the freedom of press, as they are guaranteed in the Union and in the Member States, and in particular under Article 11 of the Charter of Fundamental Rights of the European Union (the Charter).

(22) In a number of specific situations, any differences in the treatment of customers through the application of general conditions of access, including outright refusals to sell goods or to provide services, for reasons related to the customers' nationality, place of residence or place of establishment cannot be objectively justified. In those situations, all such discrimination should be prohibited and customers should consequently be entitled, under the specific conditions laid down in this Regulation, to engage in transactions under the same conditions as a local customer and should have full and equal access to any of the different goods or services offered irrespective of their nationality, place of residence or place of establishment. Where necessary, traders should therefore take measures to ensure compliance with that prohibition of discrimination if, otherwise, the customers concerned would be precluded from having such full and equal access.

(23) The first of those situations is where the trader sells goods and those goods are delivered to a Member State to which the trader offers delivery under the trader's general conditions of access, or are collected at a location agreed upon between the trader and the customer in a Member State in which the trader offers such an option in those general conditions of access. In that situation the customer should be able to purchase goods, under exactly the same conditions, including price and conditions relating to the delivery of the goods, as similar customers who are residents of or are established in the Member State in which the goods are delivered or in which the goods are collected. That could mean that foreign customers will have to pick up the goods in that Member State, or in a different Member State to which the trader delivers, or arrange, by their own private means, the cross-border delivery of the goods. In this situation, in accordance with Directive 2006/112/EC, there is no need to register for VAT in the Member State of the customer.

(24) The second situation is where the trader provides electronically supplied services. In this case, no physical delivery is required, as the services are being supplied electronically. The trader can declare and pay VAT in a simplified manner in accordance with the rules applicable to the VAT MOSS set out in Implementing Regulation (EU) No 282/2011. Electronically supplied services include for example cloud services, data warehousing services, website hosting and the provision of firewalls, use of search engines and internet directories.

(25) Finally, in the situation where the trader provides services and those services are received by the customer in a physical location, such as the premises of the trader or at another specific location where the trader offers to provide services within the territory where the trader operates, the application of different general conditions of access for reasons related to the customer's nationality, place of residence or place of establishment would not be justified either. Those situations concern the provision of services other than electronically supplied services, such as hotel accommodation, sports events, car rental, and entrance tickets for music festivals or leisure parks. In those situations, the trader does not have to register for VAT in another Member State or arrange for the cross-border delivery of goods.

(26) In all those situations, by virtue of the provisions on the law applicable to contractual obligations and on jurisdiction set out in Regulations (EC) No 593/2008 and (EU) No 1215/2012, where a trader does not pursue activities in the Member State of the consumer or does not direct activities there, compliance with this Regulation does not entail any additional costs for the trader associated with jurisdiction or differences in applicable law. Where, in contrast, a trader pursues activities in the consumer's Member State, or directs activities there, the trader has manifested an intention to establish commercial relations with consumers from that Member State and thus has been able to take account of any such costs.

(27) The prohibition of discrimination against customers pursuant to this Regulation should not be understood as precluding traders from offering goods or services in different Member States, or to certain groups of customers, by means of targeted offers and differing general conditions of access, including through the setting-up of country-specific online interfaces. However, in those situations, traders should always treat their customers in a non-discriminatory manner, regardless of their nationality or the place of residence or place of establishment when a customer wishes to benefit from such offers and general conditions of access. That prohibition should not be understood as precluding the application of general conditions of access that differ for other reasons, for example membership of a certain association or contributions made to the trader, where such reasons are unrelated to nationality, place of residence or place of establishment. Neither should that prohibition be understood as precluding the freedom of traders to offer, on a non-discriminatory basis, different conditions, including different prices, in different points of sale, such as shops and websites, or to make specific offers only to a specific territory within a Member State.

(28) Furthermore, that prohibition should not be understood as affecting the application of any territorial or other limitation on after-sales customer assistance or after-sales services offered by the trader to the customer. This Regulation should, therefore, not be understood as imposing an obligation to deliver goods cross-border to another Member State where the trader would not otherwise offer the possibility of such delivery to its customers. Nor should it be understood as providing for an additional obligation to bear any costs of postage and transport and assembly and disassembly costs beyond what has been contractually agreed in accordance with Union and national law. The application of this Regulation should be without prejudice to Directives 1999/44/EC ([1]) and 2011/83/EU ([2]) of the European Parliament and of the Council.

(29) Mere compliance with this Regulation should not, in itself, entail an obligation for a trader to comply with non-contractual national legal requirements relating to the respective goods and services of the Member State of the customer, such as labelling or sector-specific requirements, or to inform customers about those requirements.

(30) Traders falling under the special scheme provided for in Chapter 1 of Title XII of Directive 2006/112/EC are not required to pay VAT in the Member State where they are established. For those traders, when providing electronically supplied services, the prohibition of applying different general conditions of access for reasons related to

([1]) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).

([2]) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

customers' nationality, place of residence or place of establishment would imply a requirement to register in order to account for VAT of other Member States and might entail additional costs, which would be a disproportionate burden, considering the size and characteristics of the traders concerned. Therefore, those traders should be exempted from that prohibition for as long as such a scheme is applicable.

(31) In all those situations, traders may, in some cases, be prevented from selling goods or providing services to certain customers, or to customers in certain territories, for reasons related to customers' nationality, place of residence or place of establishment, as a consequence of a specific prohibition or a requirement laid down in Union law or in the laws of Member States in accordance with Union law. Laws of Member States may also require, in accordance with Union law, traders to respect certain rules on the pricing of books. Traders should not be prevented from complying with such laws in as far as necessary.

(32) Under Union law, traders are, in principle, free to decide which means of payment they wish to accept. In accordance with Regulation (EU) 2015/751 of the European Parliament and of the Council ([1]) and Directive (EU) 2015/2366 of the European Parliament and of the Council ([2]), traders accepting a card-based payment instrument of a specific brand and category are not obliged to accept cards of that same category from other brands of card-based payment instruments, or other categories of card from that same brand. Thus, traders accepting a debit card of a given brand are not obliged to accept a credit card of that brand, or, when accepting consumer credit cards of a given brand, also to accept commercial credit cards of the same brand. Equally, a trader using payment initiation services defined in Directive (EU) 2015/2366 is under no obligation to accept the payment if this requires entering into a new or modified contract with a payment initiation service provider. However, once this choice has been made traders should not discriminate against customers within the Union by refusing certain transactions, or by otherwise applying certain different conditions of payment in respect of those transactions, for reasons related to customers' nationality, place of residence or place of establishment. In that particular context, such unjustified unequal treatment for reasons related to the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union should likewise be expressly prohibited. It should be further recalled that Regulation (EU) No 260/2012 of the European Parliament and of the Council ([3]) already prohibits all payees, including traders, from requiring bank accounts to be located in a certain Member State for a payment in euro to be accepted. The trader should remain free to request non-discriminatory charges for the use of a payment instrument, subject to Union law. Moreover, this right is subject to the restrictions introduced by Member States under Article 62(5) of Directive (EU) 2015/2366.

(33) Directive (EU) 2015/2366 introduced strict security requirements for the initiation and processing of electronic payments. Those requirements reduce the risk of fraud for all new and more traditional means of payment, especially online payments. Payment service providers are obliged to apply so-called strong customer authentication, an authentication process that validates the identity of the user of a payment service or of the payment transaction. For remote transactions, such as online payments, the security requirements go even further, requiring a dynamic link to the amount of the transaction and the account of the payee, to further protect the user by minimising the risks in case of mistakes or fraudulent attacks. As a result of those requirements, the risk of payment fraud in national and cross-border purchases has been significantly reduced. However, in situations where there are no other means available to the trader to reduce the risk of default by customers, including in particular difficulties related to assessing of the creditworthiness of the customer, traders should be allowed to withhold the delivery of the goods or the provision of the service until they have received confirmation that the payment transaction has been properly initiated. In the case of direct debit, traders should be allowed to request advance payment via credit transfer before goods are dispatched or before the service is provided. Different treatment, however, should be based only on objective and well justified reasons.

(34) This Regulation should not affect the application of the rules on competition, and in particular Articles 101 and 102 TFEU. In particular, this Regulation, and specifically its provisions on access to goods or services, should

([1]) Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123, 19.5.2015, p. 1).

([2]) 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 (OJ L 337, 23.12.2015, p. 35).

([3]) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

not affect agreements restricting active sales within the meaning of Commission Regulation (EU) No 330/2010 ([1]). Agreements imposing obligations on traders not to engage in passive sales in respect of certain customers or groups of customers in certain territories are generally considered to restrict competition and cannot normally be exempted from the prohibition laid down in Article 101(1) TFEU. Where, however, such an exemption applies, or where contractual restrictions are not covered by Article 101 TFEU, there is a risk that they could be used to circumvent the provisions of this Regulation. The relevant provisions of such agreements should therefore be automatically void where they impose obligations on traders to act in breach of the prohibitions laid down in this Regulation regarding access to online interfaces, access to goods or services and payment. Those provisions concern, for example, contractual restrictions that prevent a trader from responding to unsolicited requests from individual customers for the sale of goods, without delivery, outside the trader's contractually allocated territory for reasons related to customers' nationality, place of residence or place of establishment.

(35) Member States should designate one or more bodies to be responsible for taking effective action to ensure compliance with this Regulation. Those bodies, which could include courts or administrative authorities, should have the necessary powers to order the trader to comply with this Regulation. Member States should also ensure that effective, proportionate and dissuasive measures can be taken against traders in the event of any breach of this Regulation.

(36) Consumers should be in the position to receive assistance from responsible authorities facilitating the resolution of disputes with traders, arising from the application of this Regulation, including, where appropriate, the bodies set up under Regulation (EU) No 524/2013 of the European Parliament and of the Council ([2]).

(37) This Regulation should be regularly evaluated, with a view to proposing amendments where they are necessary. Such evaluations should take into account the overall impact of this Regulation on the internal market and on cross-border e-commerce. The first evaluation should concentrate on assessing the possible extension of the prohibition of different general conditions of access to electronically supplied services, including those 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 requisite rights for the relevant territories. It should also analyse whether the scope of this Regulation should be extended to services falling outside the scope of Directive 2006/123/EC, taking due account of the particularities of each of those services.

(38) 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) No 2006/2004 of the European Parliament and of the Council ([3]) should also be available in relation to those rules. However, as Regulation (EC) No 2006/2004 only applies with respect to laws that protect consumers' interests, those mechanisms should be available only when the customer is a consumer. Regulation (EC) No 2006/2004 should therefore be amended accordingly. Since Regulation (EC) No 2006/2004 is repealed by Regulation (EU) 2017/2394 of the European Parliament and the Council ([4]) with effect from 17 January 2020, that Regulation should also be amended in order to maintain the protection of consumers' interests.

(39) In order to allow for actions for injunctions aimed at the protection of the collective interests of consumers with respect to acts contrary to this Regulation in accordance with Directive 2009/22/EC of the European Parliament and of the Council ([5]), that Directive should also be amended, so as to include in its Annex I a reference to this Regulation. Consumers should also be encouraged to make good use of out-of-court dispute resolution mechanisms concerning contractual obligations stemming from online sales or service contracts established under Regulation (EU) No 524/2013.

([1]) Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1).

([2]) Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1).

([3]) Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (OJ L 364, 9.12.2004, p. 1).

([4]) Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

([5]) Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30).

(40) Traders, public authorities and other interested parties should have sufficient time to adapt to, and ensure compliance with, the provisions of this Regulation.

(41) In order to achieve the objective of effectively addressing direct and indirect discrimination based on customers' nationality, place of residence or place of establishment, 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 across the Union and their entry 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.

(42) Since the objective of this Regulation, namely the prevention of direct and indirect discrimination based on customers' nationality, place of residence or place of establishment, including unjustified geo-blocking, in transactions with traders within the Union, cannot be sufficiently achieved by Member States, due to the cross-border nature of the problem and the insufficient clarity of the existing legal framework, but can rather, by reason of its scale and potential effect on trade in the internal market, 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 that objective.

(43) This Regulation respects fundamental rights and observes the principles recognised in the Charter. In particular this Regulation seeks to ensure full respect of Articles 11, 16, 17 and 38 thereof,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective and scope

1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by preventing unjustified geo-blocking and other forms of discrimination based, directly or indirectly, on the customers' nationality, place of residence or place of establishment, including by further clarifying certain situations where different treatment cannot be justified under Article 20(2) of Directive 2006/123/EC.

2. This Regulation does not apply to purely internal situations, where all the relevant elements of the transaction are confined within one single Member State.

3. This Regulation does not apply to the activities referred to in Article 2(2) of Directive 2006/123/EC.

4. This Regulation shall be without prejudice to the rules applicable to the field of taxation.

5. This Regulation shall not affect the rules applicable in the field of copyright and neighbouring rights, notably the rules provided for in Directive 2001/29/EC of the European Parliament and of the Council ([1]).

6. This Regulation shall be without prejudice to Union law concerning judicial cooperation in civil matters. Compliance with this Regulation shall not be construed as implying that a trader directs activities to the Member State of the consumer's habitual residence or domicile within the meaning of point (b) of Article 6(1) of Regulation (EC) No 593/2008 and point (c) of Article 17(1) of Regulation (EU) No 1215/2012. In particular, where a trader, acting in accordance with Articles 3, 4 and 5 of this Regulation, does not block or limit consumers' access to an online interface, does not redirect consumers to a version of an online interface based on their nationality or place of residence that is different from the online interface to which the consumers first sought access, does not apply different general conditions of access when selling goods or providing services in situations laid down in this Regulation, or accepts payment instruments issued in another Member State on a non-discriminatory basis, that trader shall not be, on those grounds alone, considered to be directing activities to the Member State where the consumer has the habitual residence or domicile. Nor shall that trader, on those grounds alone, be considered to be directing activities to the Member State of the consumer's habitual residence or domicile, where the trader provides information and assistance to the consumer after the conclusion of a contract that has resulted from the trader's compliance with this Regulation.

([1]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

7. Article 20(2) of Directive 2006/123/EC shall apply to the extent that this Regulation does not lay down more specific provisions.

Article 2

Definitions

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

(1) 'electronically supplied services' means services which are delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology;

(2) 'interchange fee' means interchange fee as defined in point (10) of Article 2 of Regulation (EU) 2015/751;

(3) 'card-based payment instrument' means card-based payment instrument as defined in point (20) of Article 2 of Regulation (EU) 2015/751;

(4) 'payment brand' means payment brand as defined in point (30) of Article 2 of Regulation (EU) 2015/751;

(5) 'payment transaction' means payment transaction as defined in point (5) of Article 4 of Directive (EU) 2015/2366;

(6) 'payment service' means payment service as defined in point (3) of Article 4 of Directive (EU) 2015/2366;

(7) 'payment service provider' means payment service provider as defined in point (11) of Article 4 of Directive (EU) 2015/2366;

(8) 'payment account' means payment account as defined in point (12) of Article 4 of Directive (EU) 2015/2366;

(9) 'payment instrument' means payment instrument as defined in point (14) of Article 4 of Directive (EU) 2015/2366;

(10) 'direct debit' means direct debit as defined in point (23) of Article 4 of Directive (EU) 2015/2366;

(11) 'credit transfer' means credit transfer as defined in point (24) of Article 4 of Directive (EU) 2015/2366;

(12) 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business, craft or profession;

(13) 'customer' means a consumer who is a national of, or has his or her place of residence in, a Member State, or an undertaking which has its place of establishment in a Member State, and receives a service or purchases a good, or seeks to do so, within the Union, for the sole purpose of end use;

(14) 'general conditions of access' means all terms, conditions and other information, including net sale prices, regulating the access of customers to goods or services offered for sale by a trader, which are set, applied and made available to the public at large by or on behalf of the trader and which apply in the absence of an individually negotiated agreement between the trader and the customer;

(15) 'goods' means any tangible movable item, with the exception of items sold by way of execution or otherwise by authority of law;

(16) 'online interface' means any software, including a website or a part thereof and applications, including mobile 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 transaction with respect to those goods or services;

(17) 'service' means any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 TFEU;

(18) 'trader' means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in the name or on behalf of the trader, for purposes relating to the trade, business, craft or profession of the trader.

Article 3

Access to online interfaces

1. A trader shall not, through the use of technological measures or otherwise, block or limit a customer's access to the trader's online interface for reasons related to the customer's nationality, place of residence or place of establishment.

2. A trader shall not, for reasons related to a customer's nationality, place of residence or place of establishment, redirect that customer to a version of the trader's online interface that is different from the online interface to which the customer initially sought 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 of establishment, unless the customer has explicitly consented to such redirection.

In the event of redirection with the customer's explicit consent, the version of the trader's online interface to which the customer initially sought access shall remain easily accessible to that customer.

3. The prohibitions set out in paragraphs 1 and 2 shall not apply where the blocking or limitation of access, or the redirection is necessary in order to ensure compliance with a legal requirement laid down in Union law, or in the laws of a Member State in accordance with Union law, to which the trader's activities are subject.

In such instances, the trader shall provide a clear and specific explanation to customers regarding the reasons why the blocking or limitation of access, or the redirection is necessary in order to ensure such compliance. That explanation shall be given in the language of the online interface that the customer initially sought to access.

Article 4

Access to goods or services

1. A trader shall not apply different general conditions of access to goods or services, for reasons related to a customer's nationality, place of residence or place of establishment, where the customer seeks to:

(a) buy goods from a trader and either those goods are delivered to a location in a Member State to which the trader offers delivery in the general conditions of access or those goods are collected at a location agreed upon between the trader and the customer in a Member State in which the trader offers such an option in the general conditions of access;

(b) receive electronically supplied services from the trader, 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, including the selling of copyright protected works or protected subject matter in an intangible form;

(c) receive services from a trader, other than electronically supplied services, in a physical location within the territory of a Member State where the trader operates.

2. The prohibition set out in paragraph 1 shall not prevent traders from offering general conditions of access, including net sale prices, which differ between Member States or within a Member State and which are offered to customers on a specific territory or to specific groups of customers on a non-discriminatory basis.

3. Mere compliance with the prohibition set out in paragraph 1 does not, in itself, mean that a trader is under an obligation to comply with non-contractual national legal requirements relating to the respective goods and services of the Member State of the customer or to inform customers about those requirements.

4. The prohibition set out in point (b) of paragraph 1 shall not apply to traders that are exempted from VAT on the basis of the provisions of Chapter 1 of Title XII of Directive 2006/112/EC.

5. The prohibition set out in paragraph 1 shall not apply in so far as a specific provision laid down in Union law, or in the laws of Member States in accordance with Union law, prevents the trader from selling the goods or providing the services to certain customers or to customers in certain territories.

With respect to the sale of books, the prohibition set out in paragraph 1 shall not prevent traders from applying different prices to customers in certain territories in so far as they are required to do so under the laws of Member States in accordance with Union law.

Article 5

Non-discrimination for reasons related to payment

1. A trader shall not, within the range of means of payment accepted by the trader, apply, for reasons related to a customer's nationality, place of residence or place of establishment, the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union, different conditions for a payment transaction, where:

(a) the payment transaction is made through an electronic transaction by credit transfer, direct debit or a card-based payment instrument within the same payment brand and category;

(b) authentication requirements are fulfilled pursuant to Directive (EU) 2015/2366; and

(c) the payment transactions are in a currency that the trader accepts.

2. Where justified by objective reasons, the prohibition set out in paragraph 1 shall not prevent the trader from withholding the delivery of the goods or the provision of the service, until the trader has received confirmation that the payment transaction has been properly initiated.

3. The prohibition set out in paragraph 1 shall not prevent the trader from requesting charges for the use of a card-based payment instrument for which interchange fees are not regulated under Chapter II of Regulation (EU) 2015/751 and for those payment services to which Regulation (EU) No 260/2012 does not apply, unless the prohibition or limitation of the right to request charges for the use of payment instruments, in accordance with Article 62(5) of Directive (EU) 2015/2366, has been introduced in the law of the Member State to which the trader's operation is subject. Those charges shall not exceed the direct costs borne by the trader for the use of the payment instrument.

Article 6

Agreements on passive sales

1. Without prejudice to Regulation (EU) No 330/2010 and Article 101 TFEU, this Regulation shall not affect agreements restricting active sales within the meaning of Regulation (EU) No 330/2010 or agreements restricting passive sales within the meaning of Regulation (EU) No 330/2010 that concern transactions falling outside the scope of the prohibitions laid down in Articles 3, 4 and 5 of this Regulation.

2. Provisions of agreements imposing obligations on traders, in respect of passive sales within the meaning of Regulation (EU) No 330/2010, to act in violation of the prohibitions laid down in Articles 3, 4 and 5 of this Regulation shall be automatically void.

Article 7

Enforcement

1. Each Member State shall designate a body or bodies responsible for adequate and effective enforcement of this Regulation.

2. Member States shall lay down the rules setting out the measures applicable to infringements of the provisions of this Regulation and shall ensure that they are implemented. The measures provided for shall be effective, proportionate and dissuasive.

3. The measures referred to in paragraph 2 shall be communicated to the Commission and made publicly available on the Commission's website.

Article 8

Assistance to consumers

Each Member State shall designate a body or bodies responsible for providing practical assistance to consumers in the case of a dispute between a consumer and a trader arising from the application of this Regulation.

Article 9

Review clause

1. By 23 March 2020 and every five years thereafter, the Commission shall report on the evaluation of this Regulation to the European Parliament, the Council and the European Economic and Social Committee. In doing so, the Commission shall take into account the overall impact of the Regulation on the internal market and cross-border e-commerce, including, in particular, the potential additional administrative and financial burden for traders stemming from the existence of different applicable regulatory consumer contract law regimes. That report shall, where necessary, be accompanied by a proposal for an amendment of this Regulation, in light of legal, technical and economic developments.

2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing the scope of this Regulation, as well as the extent of the prohibition laid down in point (b) of Article 4(1) and whether this Regulation should also apply to electronically supplied services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form, provided that the trader has the requisite rights for the relevant territories.

Article 10

Amendments to Regulations (EC) No 2006/2004 and (EU)2017/2394 and Directive 2009/22/EC

1. In the Annex to Regulation (EC) No 2006/2004, the following point is added:

'22. 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 (OJ L 60 I, 2.3.2018, p. 1), only when the customer is a consumer as defined in point (12) of Article 2 of that Regulation.'.

2. In the Annex to Regulation (EU) 2017/2394, the following point is added:

'27. 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 (OJ L 60 I, 2.3.2018, p. 1), only when the customer is a consumer as defined in point (12) of Article 2 of that Regulation.'.

3. In Annex I to Directive 2009/22/EC, the following point is added:

'16. 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 (OJ L 60 I, 2.3.2018, p. 1)'.

Article 11

Final provisions

1. 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 3 December 2018.

2. However, Article 6 shall apply to provisions of agreements concluded before 2 March 2018 that are compliant with Article 101 TFEU and with any equivalent rules of national competition law from 23 March 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 February 2018.

For the European Parliament
The President
L. PAVLOVA

For the Council
The President
A. TAJANI

Statement by the Commission

The Commission takes note of the text of Article 9 agreed by the European Parliament and the Council.

Without prejudice to its right of initiative pursuant to the Treaty, the Commission wishes in this context to affirm that, in accordance with Article 9, in its first evaluation of this Regulation, due within two years after the entry into force of the Regulation, it will thoroughly assess the way in which the Regulation has been implemented and has contributed to the effective functioning of the internal market. In so doing, it will take account of the increasing expectations of consumers, especially of those with no access to copyright-protected services.

As part of the evaluation, it will also perform a substantive analysis of the feasibility and potential costs and benefits arising from any changes to the scope of the Regulation, in particular with regard to the possible deletion from Article 4(1)(b) of the exclusion of electronically supplied services, the main feature of which is the provision of access to or use of copyright-protected works or other protected subject matter, where the trader has the required rights for the relevant territories, taking due account of the likely impacts any extension of the scope of the Regulation would have on consumers and businesses, and on the sectors concerned, across the European Union. The Commission will also carefully analyse whether in other sectors, including those not covered by Directive 2006/123/EC which are also excluded from the scope of the Regulation pursuant to Article 1(3) thereof, such as services in the field of transport and audiovisual services, any remaining unjustified restrictions based on nationality, place of residence or place of establishment should be eliminated.

If in the evaluation the Commission comes to the conclusion that the scope of the Regulation needs to be amended, the Commission will accompany it with a legislative proposal to that effect.

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