



Plenary sitting

A8-0172/2017

27.4.2017

*****I**
REPORT

on the proposal for a regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC
(COM(2016)0289 – C8-0192/2016 – 2016/0152(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Róza Gräfin von Thun und Hohenstein

Rapporteur for the opinion (*):
Lidia Joanna Geringer de Oedenberg, Committee on Legal Affairs

(*) Associated committees – Rule 54 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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(*) Associated committees – Rule 54 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (COM(2016)0289 – C8-0192/2016 – 2016/0152(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0289),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0192/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Austrian Federal Council and National Council and the Luxembourg Chamber of Deputies, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 19 October 2016¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Legal Affairs, the Committee on Industry, Research and Energy and the Committee on Culture and Education (A8-0172/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Title 1

¹ Not yet published in the Official Journal.

Text proposed by the Commission

Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on addressing geo-blocking and other
forms of discrimination based on
customers' nationality, place of residence
or *place of establishment* within the
internal market and amending Regulation
(EC) No 2006/2004 and Directive
2009/22/EC

Amendment 2

Proposal for a regulation
Recital 1

Text proposed by the Commission

(1) 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 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 *the* access to their online interfaces, such as websites and apps, *of customers* from other Member States wishing to engage in cross-border commercial transactions (a practice 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* from other Member States, both online and offline. *Whereas* there may *sometimes* be objective justifications for such differential treatment, in other cases traders deny consumers wishing to engage in cross-

Amendment

Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on addressing *unjustified* geo-blocking and
other forms of discrimination based on
consumers' nationality, place of residence
or *temporary location* within the internal
market and amending Regulation (EC) No
2006/2004 and Directive 2009/22/EC

Amendment

(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, as between Member States, only State barriers. 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 consumers* from other Member States wishing to engage in cross-border commercial transactions (a practice 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 *consumers* from other Member States, both online and offline. *Whilst* there may *exceptionally* be objective justifications for such differential treatment, in other cases *some* traders' *practices* deny *or limit access to goods or services by* consumers wishing to engage

border commercial transactions *access to goods or services*, or apply different conditions *in this regard, for purely commercial reasons*.

in cross-border commercial transactions, or apply *in this regard* different conditions *which are not objectively justified*. *Studies^{1a} have shown that removing unjustified geo-blocking and other forms of discrimination based on consumers' nationality, place or residence or temporary location could foster growth and reduce average prices throughout the internal market.*

^{1a} See European Commission impact assessment. See also European Parliament Policy Department studies (1) “*Extending the scope of the geoblocking prohibition: an economic assessment*” [http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/595364/IPOL_IDA\(2017\)595364_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/595364/IPOL_IDA(2017)595364_EN.pdf) and (2) “*The Geoblocking proposal: internal market, competition law and other regulatory aspects*” [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/595362/IPOL_STU\(2017\)595362_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/595362/IPOL_STU(2017)595362_EN.pdf).

Amendment 3

Proposal for a regulation Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) This is not a stand-alone Regulation, it is intended to be understood in conjunction with the proposal for a Directive on certain aspects concerning contracts for online and other distance sales of goods^{1a} and the proposal for a Directive on certain aspects concerning contracts for the supply of digital content^{1b} that it will contribute to the creation of a digital single market.

^{1a} COM (2015)0635.

Justification

The proposed regulation is explicitly to be considered in association with other proposals for legislation to create a digital single market, and its success is contingent on those proposals. Reference should thus be made to the Directive on certain aspects concerning contracts for the sales of goods and repealing Directive 1999/44/EC and the Directive on certain aspects concerning contracts for the supply of digital content and digital services.

Amendment 4

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) In this manner certain traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus 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 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. Clarifying in which situations there can be no justification for differential treatment of this kind should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

Amendment

(2) In this manner, certain traders' *practices* artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus restricting the rights of *consumers* 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 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. ***However, there are different underlying reasons for such practices by companies, in particular SMEs and micro-enterprises. In many cases, divergent legal environments, the legal uncertainty involved and the associated risks as regards the applicable consumer protection and environmental or labelling laws, taxation and fiscal issues, delivery costs or language requirements contribute to the traders' unwillingness to engage in commercial relations with consumers from other Member States. In other cases some traders are fragmenting the market in order to increase consumer prices.*** Clarifying in which situations there can be no justification for differential treatment of

this kind *and what the traders' responsibility would be when selling to consumers from different Member States in compliance with this Regulation* should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

Amendment 5

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) This Regulation aims to address geo-blocking by removing a barrier 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 lead to the fragmentation of the single market, often forcing traders to engage in geo-blocking practices. Therefore the European Parliament, the Council and the Commission should continue to address these barriers with a view to reduce market fragmentation and complete the single market.

Amendment 6

Proposal for a regulation Recital 3

Text proposed by the Commission

Amendment

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament

and of the Council¹⁷, 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, ***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.

¹⁷ 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).

Amendment 7

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) 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.

and of the Council¹⁷, 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 has not sufficiently reduced legal uncertainty. ***This Regulation aims to supplement Article 20 of Directive 2006/123/EC. It should not be construed as replacing that Directive. Rather, it aims to supplement it, by defining certain situations where different treatment on the basis of nationality, place of residence or temporary location cannot be justified under Article 20(2) of Directive 2006/123/EC.*** Moreover, ***unjustified*** geo-blocking and other forms of discrimination based on nationality, place of residence or ***temporary location*** can also arise as a consequence of actions by traders established in third countries, which fall outside the scope of that Directive.

¹⁷ 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).

Amendment

(4) For the purposes of ensuring the good functioning of the internal market ***and guaranteeing the free movement of people, goods and services without discrimination on the basis of country of origin or place of residence,*** 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 maintain a balance between consumer protection and economic and contractual freedom for traders.*

Amendment 8

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) 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 *customers'* 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.

Amendment

(5) This Regulation aims *to prevent* discrimination based on *a consumer's* nationality, place of residence or *temporary location*, including geo-blocking, in cross-border commercial transactions between *a trader and a consumer* relating to 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 *consumers'* nationality, place of residence or *temporary location*. Such other criteria can be applied, in particular, on the basis of information indicating the physical location of *consumers*, 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 *in which* the *consumer's* payment instrument has been issued.

Amendment 9

Proposal for a regulation

Recital 5 a (new)

(5a) This Regulation should not apply to purely internal situations in which no cross-border elements can be presumed to exist and all relevant activities related, inter alia, to nationality, place of residence or temporary location, access to an online interface, access to goods or services or payment transactions are confined within one and the same Member State.

Amendment 10

Proposal for a regulation

Recital 6

Text proposed by the Commission

Amendment

(6) **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. As a consequence, the provisions of this Regulation should apply inter alia to non-audio-visual 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 provided for in Article 4 **and the subsequent evaluation of that exclusion as provided for in Article 9. 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 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-**

(6) **Given** 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 **its** material scope, consistency should be ensured between this Regulation and Directive 2006/123/EC. As a consequence, the provisions of this Regulation should apply inter alia to non-audio-visual 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 provided for in Article 4. **It should be noted, however, that since the adoption of Directive 2006/123/EC, regulatory and administrative barriers for traders have been partially removed in other sectors.also.**

discrimination in payments.

Amendment 11

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Given the specific nature of cultural works and the specific commercial models for their distribution, this Regulation should not affect the principle of the territoriality of copyright in cultural sectors.

Amendment 12

Proposal for a regulation Recital 7

Text proposed by the Commission

Amendment

(7) 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 Council¹⁸, Regulation (EU) No 1177/2010 of the European Parliament and of the Council¹⁹ and Regulation (EU) No 181/2011 of the European Parliament and of the Council²⁰ already contain broad prohibitions *of discriminations* covering all discriminatory practices that the present Regulation seeks to address. Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council²¹ will be amended to that effect in 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.

(7) Discrimination *also occurs* in relation to services *outside the scope of this Regulation, including* in the field of *audio-visual, financial, electronic communications, transport or healthcare services. Audio-visual services, including services the main feature of which is the provision of access to broadcasts of sports events which are provided on the basis of exclusive territorial licenses, should be excluded from the scope of this Regulation. Access to retail financial services, including payment services, should also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments. Concerning electronic communications, the Commission has presented a proposal for a European Electronic Communications Code which upholds the principle of non-discrimination^{17a}. As regards transport, Regulation (EC) No 1008/2008 of the European Parliament and of the Council¹⁸,*

Regulation (EU) No 1177/2010 of the European Parliament and of the Council¹⁹ and Regulation (EU) No 181/2011 of the European Parliament and of the Council²⁰ already contain broad prohibitions *on discrimination* covering all discriminatory practices that the present Regulation seeks to address. Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council²¹ will be amended to that effect in *the* near future. *For healthcare services, Directive 2011/24/EU of the European Parliament and of the Council^{21a} already states that patients from other Member States cannot be discriminated against with regard to nationality.* Therefore, and in order to ensure consistency with the *acquis*, services in the field of, *inter alia, audio-visual, financial, electronic communications, transport or healthcare services* should, *at this stage*, remain outside the scope of this Regulation.

^{17a} Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) - COM(2016)0590.

¹⁸ 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).

¹⁹ 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).

²⁰ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004

¹⁸ 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).

¹⁹ 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).

²⁰ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004

(OJ L 55, 28.2.2011, p. 1).

²¹ 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).

(OJ L 55, 28.2.2011, p. 1).

²¹ 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).

^{21a} ***Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).***

Amendment 13

Proposal for a regulation Recital 8

Text proposed by the Commission

(8) 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.

Amendment

(8) 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 **a** specific base for action at Union level as regards taxation matters.

Amendment 14

Proposal for a regulation Recital 9

Text proposed by the Commission

(9) Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council²², the choice of law applicable to contracts between a consumer and a professional who pursues his or her commercial or professional activities in the country where the consumer has his or her 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 depriving the consumer

Amendment

deleted

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 or her habitual residence. Pursuant to Regulation (EU) 1215/2012 of the European Parliament and of the Council²³, in matters related to a contract between a consumer and a professional who 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.

²² *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).*

²³ *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).*

Amendment 15

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) 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 of the European Parliament and of the

Amendment

(10) This Regulation should ***be without prejudice to the applicable*** 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 of the European Parliament and

Council²⁴ and (EU) 1215/2012 of the European Parliament and of the Council²⁵, 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.***

²⁴ 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).

²⁵ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the

of the Council²⁴ and (EU) 1215/2012 of the European Parliament and of the Council²⁵, including the application of those acts and provisions in individual cases. Mere ***compliance with*** this Regulation should not be construed as implying that ***a trader*** directs his activities to the consumer's Member State. ***In particular, where a trader, acting in accordance with Articles 3, 4 and 5, does not block or restrict consumer access to his on-line interface, does not redirect him or her to a different version of his on-line interface to which the consumer has sought access originally, irrespective of his or her nationality or place of residence, does not apply different general conditions of access in situations provided for by this Regulation, or where the trader accepts payments instruments issued in another Member State on a non-discriminatory basis, that trader cannot be regarded, solely on these grounds, as directing his or her activities to the Member State in which the consumer has his or her habitual residence or domicile. Furthermore, a trader is also not to be deemed as directing such activities to the Member State in which the consumer has his or her habitual residence or domicile where the trader complying with this Regulation undertakes the steps reasonably expected or requested by the consumer or required by law in order to provide the necessary information and assistance to consumer whether directly or indirectly by linking the consumer to any third parties that can provide the required assistance.***

²⁴ 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).

²⁵ 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).

recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

Amendment 16

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) The discriminatory practices that this Regulation seeks to address typically take place through 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, 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 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 conditions 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 general conditions of access for the purposes of this Regulation.

Amendment

(11) The discriminatory practices that this Regulation seeks to address typically take place through 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, 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 by or on behalf of the trader through various means, such as information published in advertisements **or** on websites, or **can form part of** pre-contractual or contractual **information**. Such conditions apply in the absence of individually negotiated **terms and conditions** between the trader and the **consumers**. Terms and conditions that are individually negotiated between the trader and the **consumers** should not be considered general conditions of access for the purposes of this Regulation. **However, the possibility of individually negotiating terms and conditions or agreeing individually upon additional rights or obligations should not result in geo-blocking or other unjustified forms of discrimination addressed by this Regulation.**

Amendment 17

Proposal for a regulation

Recital 12

PE595.745v02-00

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Text proposed by the Commission

(12) **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, subject to compliance with the rules on competition.**

Amendment 18

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) 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 their nationality, place of residence or **place of establishment. 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. However, that prohibition of discrimination with respect to access to online interfaces should not be

Amendment

(12) Consumers should be safeguarded from discrimination **on grounds** related to their nationality, place of residence or **temporary location. However, in the case of dual-purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.**

Amendment

(14) In order to increase the possibility for **consumers** to access information related to sales of goods and the provision of services **within** the internal market and to increase transparency, including with respect to prices, traders **and online marketplaces** should not, through the use of technological measures or otherwise, prevent **consumers** from having full and equal access to online interfaces on the basis of their nationality, place of residence or **temporary location. Full and equal access to online interfaces in the form of a mobile application should include the possibility for the consumer to download and access any version of the mobile application that a trader operates in one or more Member State.** Technological measures **to prevent such access** can encompass, in particular, any technologies used to determine the physical location of

understood as creating an obligation for the trader to engage in commercial transactions with *customers*.

the *consumer*, including the tracking of that *location* by means of IP address, coordinates obtained through a global navigation satellite system or data related to a payment transaction. However, that prohibition of discrimination with respect to access to online interfaces should not be understood as creating an obligation for the trader to engage in commercial transactions with *a consumer*.

Amendment 19

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) In order to ensure the equal treatment of consumers and to avoid discrimination in practice, traders' websites, mobile applications and all other interfaces should be designed to allow data entry in forms from a Member State other than that of the trader. In particular, websites should permit the entry of addresses, telephone numbers, including international prefixes, bank account numbers, including IBAN and BIC numbers, and any other data from a Member State other than that of the trader if such information is required in order to complete an order through that trader's online interface. Requiring a consumer to use solely other means to order, such as email or a telephone, should not be permitted unless these are the primary means by which all consumers, including those from the Member State of the trader, make such orders.

Amendment 20

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) Certain traders operate different versions of their online interfaces, targeting *customers* from different Member States. While this should remain possible, redirecting a *customer* from one version of the online interface to another version without his or her explicit consent should be prohibited. All versions of the online interface should remain easily accessible to the *customer* at all times.

Amendment

(15) Certain traders operate different versions of their online interfaces, targeting *consumers* from different Member States. While this should remain possible, redirecting a *consumer* from one version of the online interface to another version without his or her explicit consent should be prohibited. ***Traders should not be under the obligation to require consumer's explicit consent each time the same consumer visits the same online interface. Once the consumer's explicit consent has been given, it should be deemed to be valid for all subsequent visits of the same consumer to the same online interface.*** All versions of the online interface should remain easily accessible to the *consumer* at all times.

Amendment 21

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) 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 laws of Member *States* in accordance with Union law. 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 thus be able to block, limit *the* access or redirect certain *customers or customers* in certain territories *to an online interface, insofar*

Amendment

(16) In certain cases, blocking *or* limiting of access, or redirection without the *consumer's* consent to an alternative version of an online interface for reasons related to the *consumer's* nationality, place *of* residence or *temporary location* might be necessary in order to ensure compliance with a legal requirement in Union law or in the laws of *a* Member *State* in accordance with Union law. Such laws can limit *consumers'* 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, limit access or redirect certain *groups of consumers or consumers* in certain territories *in so far as this may be*

as that is necessary for that reason.

necessary for that reason.

Amendment 22

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) 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 commercial transactions under the same conditions as a local **customer** and 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**. However, the prohibition applicable in those situations should not be understood as precluding traders from directing their activities at different Member States or certain groups of **customers** with targeted offers and differing **terms and** conditions, including through the setting-up of country-specific online interfaces.

Amendment

(17) In a number of specific situations, any differences in the treatment of **consumers** through the application of general conditions of access, including outright refusals to sell goods or to provide services, for reasons related to the **consumers'** nationality, place of residence or **temporary location** cannot be objectively justified. In those situations, all such discrimination should be prohibited and **consumers** should consequently be entitled, under the specific conditions laid down in this Regulation, to engage in commercial transactions under the same conditions as a local **consumer** and **should** have full and equal access to any of the different goods or services offered, irrespective of **his or her** nationality, place of residence or **temporary location**. Where necessary, **a trader** should therefore take measures to ensure compliance with that prohibition of discrimination. However, the prohibition applicable in those situations should not be understood as precluding traders from directing their activities at different Member States or certain groups of **consumers** with targeted offers and differing **general conditions of access**, including through the setting-up of country-specific online interfaces **including those with different prices**.

Amendment 23

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the *customer* resides. 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 the Member State *of the trader*. That *may* mean that a foreign *customer* will have to pick up the good in that Member State, or in a different Member State to which the trader delivers. In this situation, there is no need to register for value added tax ("VAT") in the Member State of the *customer*, *nor arrange for the cross-border delivery of goods*.

Amendment

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the *consumer* resides. ***Instead, the trader offers delivery to a location in a Member State other than the Member State of residence of the consumer, including a possibility to collect the goods at a location to be agreed upon between the trader and the consumer.*** In that situation the *consumer* should be able to purchase goods under exactly the same conditions, including price *conditions* and conditions relating to the delivery of the goods, as similar *consumers* who are residents of the Member State ***in which the goods are delivered or in which the goods are collected.*** That *might* mean that a foreign *consumer* will have to pick up the good 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 Council Directive 2006/112/EC^{1a}***, there is no need to register for value added tax ("VAT") in the Member State of the *consumer*.

^{1a} ***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.***

Amendment 24

**Proposal for a regulation
Recital 19 a (new)**

Text proposed by the Commission

Amendment

(19a) The third situation is where consumers seek to receive 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, such as e-books or online music, games or software, provided that the trader has the rights or has acquired the licence to use such content for the relevant territories. In this case too, 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 on VAT Mini-One-Stop-Shop (MOSS) set out in Implementing Regulation (EU) No 282/2011.

Amendment 25

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) Finally, in the situation where the trader provides services and those services are received by the *customer* in *the* premises *of* or at a location *chosen by the trader and 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*, the application of different general conditions of access for reasons related to *such criteria* should not be justified either. Those situations concern, as the case may be, the provision of services such as hotel accommodation, *sport* events, car rental, and entry tickets to music festivals or leisure parks. In those situations, the trader does not have to register for VAT in another Member State *nor arrange for cross-border delivery of goods*.

Amendment

(20) Finally, in the situation where the trader provides services and those services are received by the *consumer* in premises or at a location *not situated in* the Member State in which the *consumer* has his or her place of residence, the application of different general conditions of access for reasons related to *the nationality, place of residence or temporary location of the consumer* should not be justified either. Those situations concern, as the case may be, the provision of services *excluding electronically supplied services*, such as hotel accommodation, *sports* events, car rental, and entry tickets to music festivals or leisure parks. In those situations, the trader does not have to register for VAT in another Member State.

Amendment 26

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) 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) 1215/2012, 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***, compliance with this Regulation does not ***imply*** any additional costs for the trader 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.***

Amendment

(21) 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 his activities in the Member State of the consumer or does not direct his activities there, compliance with this Regulation does not ***involve*** any additional costs for the trader associated with jurisdiction or differences in applicable law.

Amendment 27

Proposal for a regulation Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) In all of those situations, the general conditions of access should comply with the laws and regulations of the Member State where the trader pursues his or her activities or to which he or she directs his or her activities. A trader does not need to ensure that the general conditions of access comply with the laws and regulations, or to use the language, of the Member State of residence of a consumer to whom the trader does not intend to sell.

Amendment 28

Proposal for a regulation Recital 21 b (new)

Text proposed by the Commission

Amendment

(21b) The use of a language in a trader's online interface cannot in itself be adduced as indicating that the trader is intent on selling to consumers from another Member State.

Justification

While the general terms and conditions should include an indication of the trader's intended market, it should not be assumed, in cases of doubt, that the mere use of a particular language indicates intent to attract purchasers from another Member State in which that language is used.

Amendment 29

Proposal for a regulation Recital 21 c (new)

Text proposed by the Commission

Amendment

(21c) Pursuant to Directive 1999/44/EC of the European Parliament and of the Council^{1a}, a consumer has the right, in the case of a lack of conformity of consumer goods with the contract, to require the seller to repair those goods or to replace them, in either case free of charge, unless this is impossible or disproportionate. That Directive limits the costs to be borne by the seller to the necessary costs incurred to bring the goods into conformity. Moreover, that Directive does not preclude in certain circumstances the consumer's right to reimbursement of the cost of repair or replacement from being limited, where necessary, to an amount proportionate to the value the goods would have if there were no lack of conformity and the significance of the lack of conformity.

Where applicable, rules on precontractual information, language requirements, the right of withdrawal, its exercise and its effects, delivery, and the passing of risk are governed by Directive 2011/83/EU of the European Parliament and of the Council^{1b}. That Directive determines inter alia what costs are to be incurred by consumers and traders in case of withdrawal from a distance or off-premises contract. The application of this Regulation should be without prejudice to Directives 1999/44/EC and 2011/83/EU.

^{1a} 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).

^{1b} 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).

Amendment 30

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) Traders falling under the special scheme provided in Chapter 1 of Title XII of **Council** Directive 2006/112/EC²⁷ are not required to pay VAT. For those traders, when providing electronically supplied services, the prohibition **of** applying different general conditions of access for reasons related to the nationality, place of residence or **place of establishment** of the

Amendment

(22) 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 in which they are established**. For those traders, when providing electronically supplied services, the prohibition **against** applying different general conditions of access for reasons related to the nationality,

customer 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 such time as such a scheme is applicable.

place of residence or *temporary location* of the *consumer* would *involve* a requirement to register in order to account for VAT of other Member States and might entail additional costs, which would *impose* a disproportionate burden, considering the size and characteristics of the traders concerned. Therefore, those traders should be exempted from that prohibition for such time as such a scheme is applicable.

²⁷ *Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1–118)*

Amendment 31

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) 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 the nationality, place of residence or *place of establishment* of the *customer*, 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.

Amendment

(23) In all those situations, traders may in some cases be prevented from selling goods or providing services to certain *groups of consumers* or to *consumers* in certain territories, for reasons related to the nationality, place of residence or *temporary location* of the *consumer*, as a consequence of a specific prohibition or a requirement laid down in Union law or in the laws of *a Member State* 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. *In addition, the laws of Member States may require that electronically supplied publications should be able to benefit from the same preferential VAT rate treatment as publications on any means of physical support, as provided for in the proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals^{1a}.* Traders

should not be prevented from complying with such laws in as far as necessary.

^{1a} COM(2016)0758.

Amendment 32

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) Under Union law, traders are in principle free to decide which means of payment they wish to accept, **including payment brands**. However, once this choice has been made, in view of the existing legal framework for payment services, **there are no reasons for** traders to discriminate **customers** within the Union by refusing certain commercial transactions, or by otherwise applying certain different conditions of payment in respect of those transactions, for reasons related to the nationality, place of residence or **place of establishment** of the **customer**. In this 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 be expressly prohibited **as well**. It should be further recalled that Regulation (EU) No 260/2012 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.

Amendment

(24) 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^{1a} and Directive (EU) 2015/2366 of the European Parliament and of the Council^{1b}, retailers accepting a card-based payment instrument of a specific payment brand and category are not under an obligation to accept card-based payment instruments of the same category but of a different brand, or of the same brand but a different category.** However, once this choice has been made, in view of the existing legal framework for payment services, traders **should not** discriminate **between consumers** within the Union by refusing certain commercial transactions, or by otherwise applying certain different conditions of payment in respect of those **payment** transactions, for reasons related to the nationality, place of residence or **temporary location** of the **consumer**. In this 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^{1c}** already prohibits all traders from

requiring bank accounts to be located in a certain Member State for a payment in euro to be accepted.

^{1a} 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).

^{1b} 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).

^{1c} 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).

Amendment 33

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) Directive 2015/2366/EU *of the European Parliament and of the Council*²⁸ introduced strict security requirements for the initiation and processing of electronic payments, which reduced 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

Amendment

(25) Directive 2015/2366/EU introduced strict security requirements for the initiation and processing of electronic payments, which reduced 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 *consumer* 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

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 *these* provisions, the risk of payment fraud in *national and* cross-border purchases *is brought to an equal level and should not be used as an argument to refuse or discriminate any commercial transactions within the Union.*

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* provisions, the risk of payment fraud in cross-border purchases *has been significantly reduced. However, in the case of direct debits where the trader might not be able to assess a consumer's creditworthiness properly, or it would require entering into a new or modified contract with the payment solution providers, the trader should be allowed to request an advance payment via SEPA credit transfer before dispatching the goods or providing the service. Different treatment is therefore justifiable in situations where there are no other means available to the trader to verify the creditworthiness of the consumer.*

²⁸ *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. 35–127).*

Amendment 34

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) 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 330/2010²⁹ to certain *customers* or to *customers* in certain

Amendment

(26) 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 330/2010²⁹ to certain *groups of consumers* or to *consumers* in

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 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*** in respect of passive sales requiring the trader to act in violation of this Regulation 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 Regulation (EU) No 330/2010.

²⁹ 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).

certain territories are generally considered restrictive of competition and cannot normally be exempted from the prohibition laid down in Article 101(1) TFEU. The relevant provisions of such agreements in respect of passive sales requiring the trader to act in violation of this Regulation should therefore be automatically ***null and*** 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 Regulation (EU) No 330/2010.

²⁹ 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).

Amendment 35

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) Member States should designate one or more 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, proportionate and dissuasive ***penalties*** can be ***imposed on*** traders in the event of any breach of this Regulation.

Amendment

(27) Member States should designate one or more ***responsible*** bodies ***with necessary powers to take*** effective action to monitor and to ***ensure*** compliance with the ***provisions*** of 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.

Amendment 36

Proposal for a regulation

Recital 28

Text proposed by the Commission

(28) Consumers should be *in the position* to receive assistance from responsible *authorities* facilitating the resolution of conflicts with traders, arising from the application of this Regulation, *including by way of a uniform complaint form*.

Amendment

(28) Consumers should be *able* to receive assistance from responsible *bodies* facilitating the resolution of conflicts with traders arising from the application of this Regulation. *To that end, Member States should designate as bodies responsible for providing assistance, inter alia, the Online Dispute Resolution contact points referred to in Regulation (EU) No 524/2013 of the European Parliament and of the Council^{1a}.*

^{1a} *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).*

Amendment 37

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate, in particular, on the possible extension of the *prohibition of Article 4(1)(b) 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, provided that the trader has the requisite rights for*

Amendment

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should *analyse in-depth the overall impact of the Regulation on the internal market and cross-border e-Commerce. It should* concentrate, in particular, on the possible extension of the *scope of this Regulation to other sectors. This should take due account of the specificities of each sector. In particular,*

the relevant territories.

the evaluation of the extension to audio-visual services should be based on detailed price and cost data which only service providers possess. Therefore, those providers should cooperate in the evaluation in order to facilitate the assessment of whether the inclusion of those services within the scope of this Regulation would lead to the evolution of business models which are more efficient than those currently used.

Amendment 38

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) 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 Council³⁰ 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 measures should be available only when the customer is a consumer. Regulation (EC) No 2006/2004 should therefore be amended accordingly.***

³⁰ 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).

Amendment

(30) 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 Council³⁰ should also be available in relation to those rules.

³⁰ 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).

Amendment 39

Proposal for a regulation Recital 31

Text proposed by the Commission

(31) In order to allow for the bringing of 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 Council³¹, that Directive should also be amended, so as to include a reference to this Regulation in its Annex I.

³¹ 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).

Amendment

(31) In order to allow for the bringing of 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 Council³¹, that Directive should also be amended, so as to include a reference to this Regulation in its Annex I. ***Consumers should also be encouraged to make good use of mechanisms for the out-of-court resolution of disputes concerning contractual obligations stemming from online sales or services contracts established under Regulation (EU) No 524/2013.***

³¹ 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).

Justification

Clarification, that ODR can be the appropriate means of dispute resolution in this particular field.

Amendment 40

Proposal for a regulation Recital 32

Text proposed by the Commission

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

Amendment

deleted

Regulation. *In light of the particular characteristics of 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, it is appropriate to apply the prohibition of Article 4(1)(b) only from a later date with respect to the provision of those services.*

Amendment 41

Proposal for a regulation Recital 33

Text proposed by the Commission

(33) In order to achieve the objective of effectively addressing direct and indirect 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 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.

Amendment 42

Proposal for a regulation Recital 34

Text proposed by the Commission

(34) 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

Amendment

(33) In order to achieve the objective of effectively addressing direct and indirect discrimination based on the nationality, place of residence or **temporary location of consumers**, 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 **consumers** to fully benefit from those rules.

Amendment

(34) Since the objective of this Regulation, namely the prevention of direct and indirect discrimination based on **the** nationality, place of residence or **temporary location of consumers**, including geo-blocking, in commercial transactions with traders within the Union,

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.

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.

Amendment 43

Proposal for a regulation Recital 35

Text proposed by the Commission

(35) This Regulation respects fundamental rights and observes the principle recognised in the Charter of Fundamental Rights of the European Union. In particular this Regulation seeks to ensure full respect of Articles 16 *and 17* thereof,

Amendment

(35) This Regulation respects fundamental rights and observes the principle recognised in the Charter of Fundamental Rights of the European Union. In particular this Regulation seeks to ensure full respect of Articles *11 (freedom of expression and information), 16 (freedom to conduct a business), 17 (right to property) and 38 (consumer protection)* thereof,

Amendment 44

Proposal for a regulation Article 1

Text proposed by the Commission

Article 1

Objective and scope

I. This Regulation seeks to contribute to the proper functioning of the internal market by preventing discrimination based, directly or indirectly, on the nationality,

Amendment

Article 1

Subject matter

This 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*.

place of residence or *temporary location of consumers and to further supplement Article 20 of Directive 2006/123/EC*.

2. This Regulation applies to the following situations:

(a) where the trader sells goods, provides services, or seeks to do so, in a Member State other than the Member State in which the customer has the place of residence or the place of establishment;

(b) where the trader sells goods, provides services, or seeks to do so, in the same Member State as the one in which the customer has the place of residence or place of establishment, but the customer is a national of another Member State;

(c) where the trader sells goods or provides services, or seeks to do so, in a Member State in which the customer is temporarily located without residing in that Member State or having the place of establishment in that 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 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 or her activities to the Member State where the consumer has the 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) 1215/2012.

6. Insofar as the provisions of this Regulation conflict with the provisions of Article 20(2) of Directive 2006/123/EC, the provisions of this Regulation shall prevail.

Amendment 45

Proposal for a regulation Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

Scope

- 1. This Regulation does not apply to purely internal situations in which all relevant elements of the transaction are confined within a single Member State.*
- 2. This Regulation does not apply to the activities referred to in Article 2(2) of Directive 2006/123/EC.*
- 3. This Regulation shall be without prejudice to the rules applicable in the field of taxation.*
- 4. In so far as the provisions of this Regulation conflict with the provisions of Article 20(2) of Directive 2006/123/EC, the provisions of this Regulation shall prevail.*
- 5. This Regulation shall be without prejudice to the applicable Union law concerning judicial cooperation in civil matters. Mere compliance with this Regulation shall not be construed as implying that a trader directs his or her activities to the Member State where the consumer has the 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) 1215/2012. In particular, where a trader, acting in accordance with Articles 3, 4 and 5, does not block or restrict consumer access to his on-line interface, does not redirect him or her to a different version of his on-line interface to which the consumer has sought access originally, irrespective of his or her nationality or place of residence, does not apply different general conditions of access in situations provided for by this*

Regulation, or where the trader accepts payments instruments issued in another Member State on a non-discriminatory basis, that trader cannot be regarded, solely on these grounds, as directing his or her activities to the Member State in which the consumer has his or her habitual residence or domicile.

Furthermore, a trader shall also not be deemed to direct his or her activities to the Member State in which the consumer has his or her habitual residence or domicile where the trader acting in accordance with this Regulation undertakes the steps reasonably expected or requested by the consumer or required by law in order to provide the necessary information and assistance to consumer whether directly or indirectly by linking the consumer to any third parties that can provide the required assistance.

Amendment 46

Proposal for a regulation Article 2 – paragraph 1

Text proposed by the Commission

For the purposes of this Regulation, ***the definitions set out in*** Article 7 of Implementing Regulation (EU) No 282/2011, Article 2(10), (20) and (30) of Regulation (EU) 2015/751 ***of the European Parliament and Council³² and Article 4(8), (9), (11), (12), (14), (23), (24) and (30) of Directive (EU) 2015/2366 shall apply.***

Amendment

For the purposes of this Regulation:

- (a) ***'electronically supplied services' has the meaning assigned to that term by Article 7 of Implementing Regulation (EU) No 282/2011;***
- (b) ***'interchange fee', , has the meaning assigned to that term by Article 2(10) of Regulation (EU) 2015/751;***
- (c) ***'card-based payment instrument'***

has the meaning assigned to that terms by Article 2(20) of Regulation (EU) 2015/751;

(d) 'payment brand' has the meaning assigned to that term by Article 2(30) of Regulation (EU) 2015/751;

(e) 'payment transaction' has the meaning assigned to that term by Article 4(5) of Directive (EU) 2015/2366.

(f) 'payer' has the meaning assigned to that terms by Article 4(8) of Directive (EU) 2015/2366;

(g) 'payment service provider' has the meaning assigned to that terms by Article 4(11) of Directive (EU) 2015/2366;

(h) 'payment account' has the meaning assigned to that terms by Article 4(12) of Directive (EU) 2015/2366;

(i) 'payment instrument' has the meaning assigned to that terms by Article 4(14) of Directive (EU) 2015/2366;

(j) 'direct debit' has the meaning assigned to that terms by Article 4(23) of Directive (EU) 2015/2366;

(k) 'credit transfer' has the meaning assigned to that terms by Article 4(24) of Directive (EU) 2015/2366;

(i) 'strong customer authentication' has the meaning assigned to that terms by Article 4(30) of Directive (EU) 2015/2366;

³² *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).*

Amendment 47

Proposal for a regulation Article 2 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

The following definitions shall also apply:

The following definitions shall also apply
for the purposes of this Regulation:

Amendment 48

Proposal for a regulation

Article 2 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) '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;

deleted

Justification

In order to guarantee freedom of contract, B2B contracts should be excluded from this Regulation with the consequence that the Regulation only applies to B2C contracts.

Amendment 49

Proposal for a regulation

Article 2 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) 'general conditions of access' means all terms, conditions and other information, including 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;

(d) 'general conditions of access' means all terms, conditions and other information, including **net** sale prices, regulating access by consumers 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 consumer;

Amendment 50

Proposal for a regulation

Article 2 – paragraph 2 – point e

Text proposed by the Commission

(e) 'goods' means any tangible movable item, with the exception of items sold by way of execution or otherwise by authority of law; water, gas and electricity **shall be considered as goods within the meaning of this Regulation where** they are put up for sale in a limited volume or a set quantity;

Amendment

(e) 'goods' means any tangible movable item, with the exception of (i) items sold by way of execution or otherwise by authority of law, **and (ii)** water, gas and electricity **unless** they are put up for sale in a limited volume or a set quantity;

Justification

Alignment with the online sales proposal.

Amendment 51

Proposal for a regulation

Article 2 – paragraph 2 – point f

Text proposed by the Commission

(f) '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 with respect to those goods or services;

Amendment

(f) 'online interface' means any software, including a website **or a part thereof and mobile** applications, operated by or on behalf of a trader, which serves to give **consumers** access to the trader's goods or services with a view to engaging in a commercial transaction with respect to those goods or services;

Amendment 52

Proposal for a regulation

Article 2 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) 'online marketplace' means a digital service that allows consumers to conclude online sales or service contracts with traders either on the website of the

online marketplace or on a trader's website that uses computing services provided by the online marketplace;

+ Amendment

53

Proposal for a regulation

Article 3

Text proposed by the Commission

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 related to the nationality, place of residence or **place of establishment** of the **customer**.
2. **Traders** shall not, for reasons related 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 gives his or her explicit consent **prior** to such redirection.

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**.

Amendment

Article 3

Access to online interfaces

1. **A trader and an online marketplace** shall not, through the use of technological measures or otherwise, block or limit **consumers'** access to **his or her** online interface for reasons related to the nationality, place of residence or **temporary location** of the **consumer**.
2. **A trader** shall not, for reasons related to the nationality, place of residence or **temporary location of a consumer**, redirect **a consumer** to a version of **his or her** online interface that is different from the online interface which the **consumer initially** sought to access, by virtue of its layout, use of language or other characteristics that make it specific to **a consumer** with a particular nationality, place of residence or **temporary location**, unless the **consumer** gives his or her explicit consent to such redirection.

Where the trader allows the consumer to express a clear preference on a personal account, modifiable at any moment by the customer, the trader shall be allowed to routinely redirect that consumer to a specific landing page, on condition that that landing page allows clear and simple access to the online interface that the consumer initially sought to access.

In the event of such redirection with the **consumer's** explicit consent, the version of the online interface **which the consumer initially sought to access** shall remain

3. 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** or to **customers** in certain territories is necessary in order **to ensure compliance** with a legal requirement in Union law or in the laws of Member **States** in accordance with Union law.

4. **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 paragraph 4, the trader shall provide a clear justification. That justification shall be given in the language of the online interface that the customer originally sought to access.**

easily accessible **by the consumer**.

3. The prohibitions set out in paragraphs 1 and 2 shall not apply where the blocking **or** limitation of access or **the** redirection with respect to certain **groups of consumers** or to **consumers** in certain territories is necessary in order **for a trader or online marketplace to comply** with a legal requirement in Union law or in the laws of **a Member State** in accordance with Union law. **The trader or the online marketplace shall justify clearly and explicitly the reasons for compliance in the language of the online interface that the consumer initially sought to access.**

(In relation to consumer/trader, the replacement of “their” with “his or her” applies throughout the text. Adopting this amendment will necessitate corresponding changes throughout.)

Amendment 54

Proposal for a regulation Article 4

Text proposed by the Commission

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**

Amendment

Article 4

Access to goods or services

1. **A trader** shall not apply different general conditions of access to **his or her** goods or services, for reasons related to the nationality, place of residence or **temporary location** of the **consumer,**

following situations:

(a) *where the trader sells goods and those goods are not delivered cross-border to the Member State of the customer by the trader or on his or her behalf;*

(b) *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;*

(c) *where the trader provides services, other than those covered by point (b), and those services are supplied to the customer in the premises of the trader or in a physical location where the trader operates, in a Member State other than that of which the customer is a national or in which the customer has the place of residence or the place of establishment.*

where the consumer seeks to:

(a) *buy goods and the trader offers delivery of those goods to a location in a Member State other than the Member State of residence of the consumer, including the option to collect the goods at a location to be agreed upon between the consumer and the trader;*

(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;*

(ba) *receive 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 in respect of which the trader has the requisite rights or has acquired the licence to use such content for the relevant territories;*

(c) *receive services from the trader other than electronically supplied services and those services are supplied to the consumer in a physical location in which the trader operates in a Member State other than that in which the consumer has his or her place of residence.*

1a. The prohibition set out in paragraph 1 shall not prevent a trader from applying different general conditions of access in different Member States or within a single Member State which are offered to consumers in a specific territory or to a specific group of consumers provided that these are not applied for reasons related to nationality, place of residence or temporary location.

1b. The prohibition set out in paragraph 1 does not entail an obligation for a trader to comply with national legal requirements or to inform customers about these requirements when a trader

2. 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 26/112/EC.

3. 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 sales of books, the prohibition set out in paragraph 1 shall *not preclude 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.

Amendment 55

Proposal for a regulation Article 5

Text proposed by the Commission

Article 5

Non-discrimination for reasons related to payment

1. *Traders* shall not, for reasons related to the nationality, place of residence or *place of establishment* of the *customer*, 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, apply different conditions *of payment for any sales of goods or provision of services*, where:

(a) *those payments are* made through electronic *transactions* by credit transfer,

does not pursue or direct his or her activities to the specific Member State.

2. 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 26/112/EC.

3. 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 *a Member State* in accordance with Union law prevents the trader from selling the goods or providing the services *concerned* to certain *groups of consumers* or to consumers in certain territories.

With respect to sales of books, *including their electronic version*, the prohibition set out in paragraph 1 shall *be without prejudice to specific legislation regarding pricing in their* Member States in accordance with Union law.

Amendment

Article 5

Non-discrimination for reasons related to payment

1. *A trader* shall not, for reasons related to the nationality, place of residence or *temporary location* of the *consumer*, 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, apply different conditions *for a payment transaction*, where:

(a) *that payment transaction is* made through *an* electronic *transaction* by credit

direct debit or a card-based payment instrument within the same payment brand;

(b) *the payee can request strong customer authentication by the payer* pursuant to *the* Directive (EU) 2015/2366; and

(c) the *payments are* in a currency that the *payee* accepts.

2. The prohibition set out in paragraph 1 shall not preclude *traders' possibility to request charges* for the use of a card-based payment instrument for which *interchanges* 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. Those charges shall not exceed the costs borne by the trader for the use of the payment instrument.

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 transaction is* in a currency that the *trader* accepts.

1a. Where justified by objective reasons, the prohibition set out in paragraph 1 shall not preclude the trader's right to withhold the goods or the provision of the service concerned until the trader has received confirmation that the payment transaction has been properly initiated.

2. The prohibition set out in paragraph 1 shall not preclude *a trader from charging* for the use of a card-based payment instrument for which *interchange* fees are not regulated under Chapter II of Regulation (EU) 2015/751 *or* for payment services to which Regulation (EU) No 260/2012 does not apply, *unless the Member State in which the trader is established has prohibited or limited such charges pursuant to Article 62(5) of Directive 2015/2366*. Those charges shall not exceed the *direct* costs borne by the trader for the

2a. The prohibition set out in paragraph 1 shall not preclude the trader's option to request, in case of direct debits, advance payment via SEPA credit transfer before goods are dispatched or before the service is provided, where they have no other way of ensuring that the purchaser will meet his or her payment obligation.

Amendment 56

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

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

Amendment

Provisions of agreements imposing on traders obligations, in respect of passive sales **within the meaning of Regulation (EU) 330/2010**, to act in violation of this Regulation shall be automatically **null and** void.

Amendment 57

Proposal for a regulation
Article 7 – title

Text proposed by the Commission

Enforcement **by Member State authorities**

Amendment

Enforcement

Amendment 58

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

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 this Regulation.**

Amendment

1. Each Member State shall designate a body or bodies responsible for the **adequate and effective** enforcement of this Regulation. **Without prejudice to other information and cooperation mechanisms, those bodies shall be responsible for ensuring cross-border cooperation with bodies in other Member States through the appropriate means.**

Amendment 59

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

2. Member States shall lay down the rules on the **penalties** applicable for infringements of the provisions of this

Amendment

2. Member States shall lay down the rules on the **measures** 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.

Regulation and shall ensure that they are implemented. The **measures** provided for shall be effective, proportionate and dissuasive.

Amendment 60

Proposal for a regulation Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Amendment 61

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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. Each Member State shall designate a body or bodies responsible for that task.

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

Justification

Alignment of structure with Article 7(1)

Amendment 62

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

Amendment

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 assist those bodies in developing this model form.

deleted

Justification

Unnecessary regulation as the model form would cover different infringement as laid down in this Regulation and could cover two different bodies.

Amendment 63

Proposal for a regulation Article 9

Text proposed by the Commission

Amendment

Article 9

Article 9

Review clause

Review clause

1. By [date: **two** years after the entry into force of this Regulation] 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. That report shall, where necessary, be accompanied by a proposal for an amendment of this Regulation, in light of legal, technical and economic developments.

1. By [date: **three** years after the entry into force of this Regulation] 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. 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 whether the **prohibition of Article 4(1)(b) 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, provided that the trader has the requisite rights for the relevant territories.**

2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing **the overall impact of this Regulation on the internal market and crossborder e-Commerce. In particular, the first in-depth evaluation shall assess whether the scope of this Regulation should be extended to cover additional sectors such as the audio-visual, financial, transport, electronic communication or healthcare**

services sectors, taking due account of the particularities of each sector.

Amendment 64

Proposal for a regulation Article 10 – paragraph 1

Text proposed by the Commission

1. In the Annex to Regulation (EC) No 2006/2004 the following point [number] is added: "[number] [full title of this Regulation] (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.**"

Amendment

1. In the Annex to Regulation (EC) No 2006/2004 the following point [number] is added: "[number] [full title of this Regulation] (OJ L XX, XX.XX.Year, p. X)".

Amendment 65

Proposal for a regulation Article 11 – paragraph 3

Text proposed by the Commission

However, point (b) of Article 4(1) shall apply from 1 July 2018.

Amendment

deleted

EXPLANATORY STATEMENT

I. Introduction

As part of its eCommerce package, the Commission presented on 25 May 2016 a proposal for a regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment. The purpose of the regulation is to ensure that customers have the same access to goods and services as local customers. The Regulation builds upon the provisions of the Services Directive (Art 20), which already establishes the principle for non-discrimination, but has proven difficult to enforce in practice due to legal uncertainty concerning what practices would – and would not be – considered justified.

The regulation seeks to provide more legal certainty and enforceability by defining specific situations when there can be no justified reason for discrimination on the grounds of nationality or residence. In addition, the proposed regulation bans the blocking of access to websites and the use of automatic re-routing without the customer's prior consent. The proposed regulation also includes provisions of non-discrimination within accepted payment means.

The Regulation is part of the overall strategy to stimulate cross-border e-commerce, a key driver for growth, by ensuring better access to goods and services, by building trust and providing greater certainty and by reducing administrative burden.

II. Position of the Rapporteur

The Rapporteur shares the overall objective of the Commission's proposal, namely to realise the **full potential of the internal market** as an area without internal frontiers in which the free movement of goods and services is ensured. The internal market is far from a reality. eCommerce is a key driver for growth, with annual growth rates in the EU averaging over 13%. However, only 15% of consumers bought online from another EU country and 8% of traders sold cross-border (as compared to 24% domestically). Traders and consumers face continued barriers. In the online environment, such barriers become immediately apparent – for consumers, for instance, it is incomprehensible why they should be prevented from accessing certain websites, why they should not be able to buy certain goods in other Member States or why they should be paying a different price based on their nationality or their residence alone.

At the same time, there are clearly justified reasons for such differential treatment by traders. One such reason could be for instance the fact that the trader does not have the required intellectual property rights in a particular territory. Or traders may consider applying different conditions of access due to for instance the additional costs incurred because of the distance involved or the technical characteristics of the provision of the service or the different market conditions.

The Commission proposal is a welcome step in the right direction. It provides more clarity by defining specific situations where it can never be considered justified to discriminate on the grounds of nationality or residence. It also brings welcome clarity of the type of actions that would be considered unacceptable – such as banning the blocking of access and the non-discrimination provisions within accepted payment means. However, the Commission proposal leaves important elements unanswered.

1. Legal certainty for consumers and traders

The Rapporteur is of the view that one of the reasons why traders may be hesitant to engage in commercial relations with consumers from other Member States is the legal uncertainty and the associated risks as regards the applicable consumer protection, environmental or labelling laws. This is not addressed in the Commission proposal, which leaves considerable uncertainty for traders and consumers alike.

To address this, the Rapporteur proposes a **new Article 8a on applicable law and jurisdiction**. The Article sets out to clarify that in those cases where a trader clearly sets out his intention to sell to consumers from one or more Member States and a consumer from another Member State wants to conclude a contract with this trader under the rights granted by Article 4 of this Regulation, then the trader will treat the consumer in the same way as he treats local consumers. In other words, the trader would be able to apply the consumer protection, environmental, labelling or product safety requirements of his Member State. Likewise, the responsible court should be that of the trader's Member State.

2. Scope

In the interest of proportionality, the rapporteur proposes to **limit the scope of the regulation to consumers only**, with one important exception, namely in case of dual purpose contracts with a limited trade focus, that person should also be considered as a consumer.

The Rapporteur can accept that at this stage the **scope of the regulation is aligned with that of the Services Directive** to the extent possible in order to ensure consistency, in other words non-economic services of general interest, transport services, audio-visual services, gambling, healthcare and certain other services are excluded from the scope of the Regulation. However, the Rapporteur believes that it is necessary to evaluate this in the context of the first review of the regulation.

However, the Rapporteur disagrees with the Commission on the question of how to treat electronically supplied services for the provision of access to and use of copyright-protected works or other protected subject-matter. The Rapporteur believes that there are numerous incidents of discrimination in relation to **electronically supplied services such as e-books, e-music, games or software**. She therefore proposes to include them within the scope of Article 4, provided that the trader has the requisite rights for the relevant territories.

3. Additional clarifications

In addition, the Rapporteur proposes a number of clarifications to the draft text of the Commission. This include in particular:

- A clarification that the non-discrimination prohibition covers not only nationality and place of residence but also **temporary location**
- A clarification that **purely internal situations** without a cross-border component are excluded (Art 1a)
- A simplification as regards Art 3 access to online interfaces: the Rapporteur considers the **explicit consent** provision suggested by the Commission as too

burdensome both for business and consumers and considers it sufficient to impose an information obligation concerning redirection as well as full access to the original interface. The Rapporteur clarifies that the explanations are to be given in the language of the online interface. The rapporteur also considers that the access to online interfaces shouldn't be limited not only by traders but also by online marketplaces.

- A clarification in Art 4 that **traders can still apply different general conditions of access between Member States or within a Member State** offered to consumers on a specific territory or a specific group of consumers, as long as these are not defined on the basis of nationality, residence or temporary location. In other words, a trader would still be able to offer different prices in different web portals, as long as a consumer approaching a given web shop from another Member State is able to buy the product under the same conditions as a local consumer.
- A clarification in Art 5 on payment methods to **avoid increased risks of fraud linked to certain payment methods** by clarifying that the trader has the right to withhold a good or service until he has received confirmation that the payment transaction has been properly initiated.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS(*)

for the Committee on the Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC
(COM(2016)0289 – C8-0192/2016 – 2016/0152(COD))

Rapporteur: Lidia Joanna Geringer de Oedenberg

SHORT JUSTIFICATION

Your rapporteur welcomes the Commission's proposal but believes that it does not go far enough in abolishing geo-blocking. The electronic provision of non-audiovisual copyright protected works or services, including e-books, software, computer games and music should be included in the scope of the Regulation from the entry into force, and at the first review after two years of application it should be evaluated whether audiovisual works should also be included in its scope. A precondition for such inclusion would however be that the trader holds a copyright licence for such works or is otherwise a rightsholder in all relevant territories. It is furthermore necessary to ensure legal clarity regarding the meaning of "directing an activity", particularly in those cases where a trader is targeting a specific Member State and the applicable choice of law rules leads to the application of the law of the Member State of the consumer. There should be no doubt about which rules apply in such situations. However, it is also essential to prevent traders from discriminating in other cases and to oblige them to sell to consumers and other traders regardless of the country of origin or residence of the consumer. The applicable law on such non-directed transactions should therefore be that of the Member State of the seller, not least in order to make life easier for small and medium-sized enterprises, for which the burden to ensure resources to effectively trade with consumers from several different legal system would be disproportionate. It is finally essential that the Regulation will start to apply as soon as possible.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Title

Text proposed by the Commission

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on addressing geo-blocking and other forms of discrimination based on *customers' nationality*, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Amendment

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on addressing geo-blocking and other forms of discrimination based on *consumers' country of origin*, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Justification

The word “nationality” is to be changed into “country of origin or residence” throughout the entire text”.

Amendment 2

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) 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 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 the access to their online interfaces, such as websites and apps, of *customers* from other Member States wishing to engage in cross-border commercial transactions (a practice known as geo-blocking). It also occurs through other

Amendment

(1) In order to realise the objective of ensuring good functioning of the internal market, as an area *where most barriers to trade have been removed and* in which the free movement of, inter alia, *people*, goods and services is ensured, *and in order to achieve the objectives set out in the Digital Market Strategy*, it is not sufficient to abolish, as between Member States, only *administrative red-tape*. Such abolition can be undermined by *certain* private parties putting in place obstacles *that are* inconsistent with *the principles and freedoms of the internal market*. That occurs where traders operating in one Member State, *in exceptional situations, unjustly* block or limit the access to their online interfaces, such as websites and

actions by certain traders involving the application of different general conditions of access to their goods and services with respect to such *customers* from other Member States, both online and offline.

Whereas there may sometimes be objective justifications for such differential treatment, in other cases traders deny consumers wishing to engage in cross-border commercial transactions access to goods or services, or apply different conditions in this regard, for purely commercial reasons.

apps, of *consumers* from other Member States wishing to engage in cross-border commercial transactions (a practice known as geo-blocking). It also occurs through other actions by certain traders involving the application of different *restrictive* general conditions of access to their goods and services with respect to such *consumers* from other Member States, both online and offline. ***This practice undermines the core purpose of the internal market, lowers consumers' options and the level of competition.***

Amendment 3

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) In this manner certain traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus 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 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***. Clarifying in which situations there can be no justification for differential treatment of this kind should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

Amendment

(2) In this manner certain traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus restricting the rights of *consumers* 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 commercial transactions within the Union, including in the sector of electronic commerce, which prevents the full growth potential of ***a truly integrated*** internal market ***and its fostering***. Clarifying in which situations there can be no justification for differential treatment of this kind should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

Amendment 4

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council¹⁷, 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, 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.

¹⁷ 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).

Amendment

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council¹⁷, Member States are to ensure that service providers established in the Union do not treat recipients of services differently on the basis of their ***country of origin*** or place of residence. However, that 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 ***country of origin*** or place of ***residence may*** arise as a consequence of actions by traders established in third countries, which fall outside the scope of that Directive, ***but which need to be tackled.***

¹⁷ 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).

Amendment 5

Proposal for a regulation Recital 3 a (new)

Text proposed by the Commission

Amendment

(3 a) Even though the present Regulation deals specifically with geo-blocking, a particular focus should be laid on increasing consumer confidence in e-commerce, providing more choice and access to lower-priced goods and services.

Amendment 6

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) 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.

Amendment

(4) For the purposes of ensuring the good functioning of the internal market ***and guaranteeing the free movement of people, goods and services without discrimination based on country of origin or place of residence***, 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. ***These measures should maintain a balance between consumer protection and economic and contractual freedom for traders.***

Amendment 7

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) 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 ***customer's 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

Amendment

(5) This Regulation aims at preventing discrimination based on customers' ***place of origin or place of residence***, in cross-border commercial transactions between traders and ***consumers*** relating to the sales of goods and the provision of ***intangible goods and services*** within the Union. It seeks to ***prevent*** direct as well as indirect discrimination. ***Indirect discrimination should be understood to mean the application of distinguishing criteria other than the consumer's country of origin or place of residence, which lead either in a determined manner or statistically to the same result as the direct application of those same criteria. 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 ***consumers' country of origin***, place of residence or place of

made or the Member State where the *customer's* payment instrument has been issued.

establishment. Such other criteria can be applied, in particular, on the basis of information indicating the physical location of *consumers*, 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 *consumer's* payment instrument has been issued. ***This Regulation should therefore prohibit the unjustified blocking of access to websites and other online undertakings, and the rerouting of consumers from one country version to another, discrimination against consumers in specific cases of the sale of goods and services and the circumventing of that prohibition on discrimination in passive sales agreements.***

Amendment 8

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) 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. As a consequence, the provisions of this Regulation should apply inter alia to non-audio-visual 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 provided for in Article 4 and the subsequent evaluation of that exclusion as provided for in Article 9.*** Audio-visual services, including services the main feature of which is the provision of access

Amendment

(6) 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. As a consequence, the provisions of this Regulation should apply inter alia to non-audio-visual ***copyright-protected works and intangible goods***, the main feature of which is the provision of access to and use of copyright-protected works or other protected subject matter ***in respect of which the trader has the rights or has acquired the licence to use such content for all relevant territories.*** Audio-visual works, including cinematographic works,

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.

and 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 excluded from the scope of this Regulation ***pending a comprehensive review of the legislation.*** Access to retail financial services, including payment services, should therefore also be excluded. ***However, the Commission should nevertheless review possibilities to include them in the scope of the Regulation,*** notwithstanding the provisions of this Regulation regarding non-discrimination in payments.

Amendment 9

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) 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 Council¹⁸, Regulation (EU) No 1177/2010 of the European Parliament and of the Council¹⁹ and Regulation (EU) No 181/2011 of the European Parliament and of the Council²⁰ already contain broad prohibitions of discriminations ***covering all discriminatory practices that the present Regulation seeks to address.*** Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council²¹ will be amended to that effect in 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.***

Amendment

(7) Discrimination ***occurs*** in relation to services in the field of transport, in particular with respect to the sales of tickets for the transport of passengers, ***even though*** regulation (EC) No 1008/2008 of the European Parliament and of the Council¹⁸, Regulation (EU) No 1177/2010 of the European Parliament and of the Council¹⁹ and Regulation (EU) No 181/2011 of the European Parliament and of the Council²⁰ already contain broad prohibitions of discriminations. Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council²¹ will be amended to that effect in near future. Therefore, ***services in the field of transport should either, after review of this Regulation, be included in the scope of this Regulation, or prohibition of discriminations covering all discriminatory practices should be effectively enforced through specific***

Union legislation in that area.

¹⁸ 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).

¹⁹ 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).

²⁰ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

²¹ 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).

¹⁸ 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).

¹⁹ 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).

²⁰ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

²¹ 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).

Amendment 10

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7 a) This Regulation should also cover the sale of bundled services. However, a trader should be under no obligation to sell the bundled services if he or she doesn't have a legal right to provide part of one or several services that are included in that bundle.

Amendment 11

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council²², ***the choice of law applicable to contracts between a consumer and a professional who pursues his or her commercial or professional activities in the country where the consumer has his or her 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 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 or her habitual residence. Pursuant to Regulation (EU) 1215/2012 of the European Parliament and of the Council²³, in matters related to a contract between a consumer and a professional who 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.

²² 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).

²³ 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,

Amendment

(9) ***This Regulation should be without prejudice*** to Regulation (EC) No 593/2008 of the European Parliament and of the Council²², ***by which in cases where a professional that pursues his or her commercial or professional activities or by any means actively directs or declares his or her activities to a country or to several countries*** where the consumer has his or her habitual residence, ***the choice of law applicable to contracts between a consumer and a professional*** may not have the result of 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 or her habitual residence. Pursuant to Regulation (EU) 1215/2012 of the European Parliament and of the Council²³, in matters related to a contract between a consumer and a professional who 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.

²² 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).

²³ 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,

Amendment 12**Proposal for a regulation****Recital 10***Text proposed by the Commission*

(10) 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 of the European Parliament and of the Council²⁴ and (EU) 1215/2012 of the European Parliament and of the Council²⁵, 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**.

Amendment

(10) This Regulation should **be without prejudice to** Union law concerning judicial cooperation in civil matters, notably the provisions on the law applicable to contractual obligations and on **court** jurisdiction set out in Regulations (EC) No 593/2008 of the European Parliament and of the Council²⁴ and (EU) 1215/2012 of the European Parliament and of the Council²⁵, including the application of those acts and provisions in individual cases. In particular, **legal clarity is necessary regarding the meaning of “directing an activity” and** the mere fact that a trader acts in **compliance** with the provisions of this Regulation should not be construed as implying that he directs his activities to the consumer's Member State, **within the meaning of Article 6(1)(b) of Regulation (EC) No 593/2008, and of Article 17(1)(c) of Regulation (EU) 1215/2012, in accordance with the case law of the Court of Justice of the European Union. The mere fact that the trader does not block/limit access to its online interface for consumers from another Member State or 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 in the payment schedule should not be considered as directing activities to the consumer's Member State. An intention to direct an activity to a consumer's Member State cannot be considered to have been expressed solely where the trader is complying with the legal obligations set out in this**

Regulation. Where a trader directs his activities to a consumer's Member State, even when such commercial targeting is not explicitly mentioned by the trader's online interface, consumers should however not lose the benefit from Regulation (EC) No 593/2008 and Regulation (EU) No 1215/2012, which should remain applicable for the sake of legal certainty.

²⁴ 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).

²⁵ 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).

²⁴ 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).

²⁵ 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).

Amendment 13

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) In situations in which a trader nevertheless provides access for consumers to his or her online interface, without applying different general conditions of access when selling goods or providing services, and in which accepting payment instruments issued in another Member State does not target the Member State where the consumer has his or her habitual residence, the applicable law should be that of the seller.

Amendment 14

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) The discriminatory practices that this Regulation seeks to address typically take place through 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, 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 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 conditions 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 general conditions of access for the purposes of this Regulation.

Amendment

(11) The discriminatory practices that this Regulation seeks to address typically take place through 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, 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 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 conditions apply in the absence of an individually negotiated agreement to the contrary entered into directly between the trader and the *consumer*. Terms and conditions that are individually negotiated between the trader and the *consumers* should not be considered general conditions of access for the purposes of this Regulation.

Amendment 15

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) 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

Amendment

deleted

between undertakings in a business to business context, such as selective and exclusive distribution, which generally allow for manufacturers to select their retailers, subject to compliance with the rules on competition.

Amendment 16

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) 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.

Amendment

(13) The effects for *consumers* 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.

Amendment 17

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) 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 their *nationality*, place of residence *or place of*

Amendment

(14) In order to increase the possibility for *consumers* 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 *consumers* from having full and equal access to online interfaces on the basis of their *country of origin or* place of residence. *Access to*

establishment. 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. However, that prohibition of discrimination with respect to access to online interfaces should not be understood as creating an obligation for the trader to engage in commercial transactions with *customers*.

online interfaces in the form of a mobile application should not be blocked in any possible way for consumers if they prefer to access their chosen online interface through such means and a trader offers such an option in a Member State.

Technological measures *that prevent such access* can encompass, in particular, any technologies used to determine the physical location of the *consumer*, including the IP address *used when accessing an online interface*, coordinates obtained through a global navigation satellite system or data related to a payment transaction. However, that prohibition of discrimination with respect to access to online interfaces should not be understood as creating an obligation for the trader to engage in commercial transactions with *consumers*.

Amendment 18

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) Certain traders operate different versions of their online interfaces, targeting *customers* from different Member States. While this should remain possible, redirecting a *customer* from one version of the online interface to another version without his or her explicit consent should be prohibited. All versions of the online interface should remain easily accessible to the *customer* at all times.

Amendment

(15) Certain traders operate different versions of their online interfaces, targeting *consumers* from different Member States. While this should remain possible, redirecting a *consumer* from one version of the online interface to another version without his or her explicit consent should be prohibited. All versions of the online interface should remain easily accessible to the *consumer* at all times.

Amendment 19

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) In certain cases, blocking, limiting of access or redirection without the

Amendment

(16) 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 laws of Member *States* in accordance with Union law. 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 thus be able to block, limit the access or redirect certain **customers or consumers** in certain territories to an online interface, insofar as that **is** necessary for that reason.

consumer's consent to an alternative version of an online interface for reasons related to the **consumer's country of origin or** place or residence **could be justified only if it is necessary** to ensure compliance with a legal requirement in Union law or in the laws of **a** Member *State* in accordance with Union law **with which the trader must comply when carrying on commercial activities in the Member State concerned**. Such laws **might** limit *consumers'* access to certain goods or services, for instance by prohibiting the display of specific content in **a** certain Member *State*. Traders should not be prevented from complying with such requirements and thus **should** be able to block **or** limit the access or redirect certain **consumers or consumers** in certain territories to an online interface, insofar as that **may be** necessary for that reason. **In this regard, a consumer should be notified on an online interface about the purpose of blocking, limiting or redirection to an alternative version of an online interface.**

Amendment 20

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) 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 commercial transactions under the same conditions as a local *customer* and have

Amendment

(17) In a number of specific situations, any differences in the treatment of *consumers* through the application of general conditions of access, including outright refusals to sell goods, **accept certain financial transactions that are officially stated by a trader** or to provide services, for reasons related to the *consumers' country of origin* or place of *residence* cannot be objectively justified. In those situations, all such discrimination should be prohibited and *consumers* should consequently be entitled, under the specific conditions laid down in this Regulation, to engage in commercial

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. ***However, the prohibition applicable in those situations should not be understood as precluding traders from directing their activities at different Member States or certain groups of customers with targeted offers and differing terms and conditions, including through the setting-up of country-specific online interfaces.***

Amendment 21

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the *customer* resides. 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 the Member State of the trader. That may mean that a foreign *customer* will have to pick up the good in that Member State, or in a different Member State to which the trader delivers. In this situation, there is no need to register for value added tax ("VAT") in the Member State of the *customer*, nor arrange for the cross-border delivery of goods.

transactions under the same conditions as a local *consumer* and have full and equal access to any of the different goods or services offered irrespective of their *country of origin* or place of *residence*. Where necessary, traders should therefore take measures to ensure compliance with that prohibition of discrimination if otherwise the *consumers* concerned would be precluded from having such full and equal access.

Amendment

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the *consumer* resides. In that situation the *consumer* should be able to purchase goods, under exactly the same conditions, including price and conditions relating to the delivery of the goods, as similar *consumers* who are residents of the Member State of the trader. That may mean that a foreign *consumer* will have to pick up the good in that Member State, or in a different Member State to which the trader delivers. In this situation, ***the trader has no obligation to cover any additional costs of the cross-border delivery.*** ***Furthermore,*** there is no need to register for value added tax ("VAT") in the Member State of the *consumer*, nor arrange for the cross-border delivery of goods.

Amendment 22

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) The second situation is 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, such as cloud services, data warehousing services, website hosting and the provision of firewalls. 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 on VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/2011.

Amendment

(19) The second situation is where the trader provides electronically supplied services, other than **audio-visual** services the main feature of which is the provision of access to and use of copyright-protected works or other protected subject matter, such as **social networking services**, cloud services, data warehousing services, website hosting and the provision of firewalls. 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 on VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/2011.

Amendment 23

Proposal for a regulation

Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Where a trader electronically provides non-audio-visual copyright-protected works or services which are not covered by Directive 2010/13/EU, including e-books, software, computer games and music, in respect of which the trader has the rights or has acquired the licence to use such content for all relevant territories, he or she should likewise be prevented from discriminating on the basis of the customer's country of origin or place of residence.

Amendment 24

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) Finally, in the situation where the trader provides services and those services are received by the **customer** in the premises of or at a location chosen by the trader and 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*, the application of different general conditions of access for reasons related to such criteria should not be justified either. Those situations concern, as the case may be, the provision of services such as hotel accommodation, sport events, car rental, and entry tickets to music festivals or leisure parks. In those situations, the trader does not have to register for VAT in another Member State nor arrange for cross-border delivery of goods.

Amendment

(20) Finally, in the situation where the trader provides services and those services are received by the **consumer** in the premises of or at a location chosen by the trader and different from the Member State of which the **consumer** is a national or in which the **consumer** has his or her place of residence, the application of different general conditions of access for reasons related to such criteria should not be justified either. Those situations concern, as the case may be, the provision of services such as hotel accommodation, sport events, car rental, and entry tickets to music festivals or leisure parks. In those situations, the trader does not have to register for VAT in another Member State nor arrange for cross-border delivery of goods.

Amendment 25

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) 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) 1215/2012, 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, compliance with this Regulation does not imply any additional costs for the trader associated with

Amendment

(21) 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 his activities in the Member State of the consumer or does not **actively** direct his activities there, or where the **consumer** is not a consumer, compliance with this Regulation does not imply any additional costs for the trader

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.

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, *inter alia by the use of language – possibly, depending on the language, in combination with other criteria –, or by reference to currency or through prominence in local search engine results, manifesting* his or her intention to establish commercial relations with consumers from that Member State, *he or she should be* able to take account of any such costs. *The prohibition of discrimination under this Regulation should however not be understood as 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 consumers, nor as an obligation to take back goods in another Member State or bear additional costs in this regard, where the trader would otherwise not be under such an obligation.*

Amendment 26

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) Traders falling under the special scheme provided in Chapter 1 of Title XII of Council Directive 2006/112/EC²⁷ are not required to pay VAT. For those traders, when providing electronically supplied services, the prohibition of applying different general conditions of access for reasons related to the *nationality, place of residence* or place of *establishment* of the *customer* 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

Amendment

(22) Traders falling under the special scheme provided in Chapter 1 of Title XII of Council Directive 2006/112/EC²⁷ are not required to pay VAT. For those traders, when providing electronically supplied services, the prohibition of applying different general conditions of access for reasons related to the *country of residence* or place of *residence* of the *consumer* 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

concerned. Therefore, those traders should be exempted from that prohibition for such time as such a scheme is applicable.

traders should be exempted from that prohibition for such time as such a scheme is applicable.

²⁷ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1–118)

²⁷ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1–118)

Amendment 27

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) 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 the nationality, place of residence or place of establishment of the customer**, 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.

Amendment

(23) In those situations, traders may in some cases be prevented from selling goods or providing services to certain **consumers** or to **consumers** in certain territories, 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. ***In addition, laws of Member States may require that electronically supplied services and electronically supplied publications should be able to benefit from the same preferential VAT rate treatment as publications on any means of physical support, in line with Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals.*** Traders should not be prevented from complying with such laws in as far as necessary ***and in as far as the Union's principles and legislation, and the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, are complied with.***

Amendment 28

Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) 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 330/2010²⁹ 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 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 in respect of passive sales requiring the trader to act in violation of this Regulation 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 Regulation (EU) No 330/2010.

²⁹ 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).

Amendment 29

Proposal for a regulation
Recital 27

Amendment

(26) 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 330/2010²⁹ to certain *consumers* or to *consumers* 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 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 in respect of passive sales requiring the trader to act in violation of this Regulation 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 Regulation (EU) No 330/2010.

²⁹ 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).

Text proposed by the Commission

(27) Member States should designate one or more 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, proportionate and dissuasive penalties can be imposed on traders in the event of any breach of this Regulation.

Amendment

(27) Member States should designate one or more **responsible** bodies **with necessary powers to take** effective action to monitor and to **ensure** compliance with the provision of this Regulation. Member States should also ensure that effective, proportionate and dissuasive penalties can be imposed on traders in the event of any breach of this Regulation.

Amendment 30

Proposal for a regulation
Recital 28

Text proposed by the Commission

(28) Consumers should be in the position to receive assistance from responsible **authorities** facilitating the resolution of conflicts with traders, arising from the application of this Regulation, including by way of a uniform complaint form.

Amendment

(28) Consumers should be in the position to receive assistance from responsible **bodies** facilitating the resolution of conflicts with traders, arising from the application of this Regulation, including by way of a uniform complaint form.

Amendment 31

Proposal for a regulation
Recital 29

Text proposed by the Commission

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate, in particular, on the possible extension of the **prohibition of** Article 4(1)(b) 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, **provided that** the trader has the **requisite** rights for the relevant territories.

Amendment

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate **on an analysis of situations in which differences in treatment cannot be justified under Directive 2006/123/EC**, in particular, on the possible extension of the **application of** Article 4(1)(b) to electronically supplied services **and intangible goods**, the main feature of which is the provision of access to and use of **audio-visual** copyright protected works **and services** or other

protected subject matter, *in respect of which* the trader has the rights *or has acquired the licences to use such content* for all relevant territories, *pending a comprehensive review of the legislation affecting those services, with a view to its possible extension to other cases, as well as the development of consumer prices and purchasing power in the Single Market following this Regulation. It should moreover take into account the legal and technological developments in Member States with regard to the reform of copyright, the audiovisual services' sector and the provision of cross-border portability of online content services for subscribers who are temporarily not present in their Member State of residence. This first evaluation should also consider the possible extension of the scope of this Regulation to financial services, transport services or healthcare services. Audio-visual service providers should in future cooperate in the evaluation in order to assess whether the inclusion of those services within the scope of this Regulation would lead to the evolution of business models which are more efficient than those currently used.*

Amendment 32

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) 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 Council³⁰ 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,

Amendment

(30) 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 Council³⁰ 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 measures should be available only when the customer is a consumer.

Regulation (EC) No 2006/2004 should therefore be amended accordingly.

Regulation (EC) No 2006/2004 should be amended accordingly.

³⁰ 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).

³⁰ 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).

Amendment 33

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) In order to achieve the objective of effectively addressing direct and indirect 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 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.

Amendment

(33) In order to achieve the objective of effectively addressing direct and indirect discrimination based on the ***country of origin*** or place of ***residence of consumers***, 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 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 ***consumers*** to fully benefit from those rules.

Amendment 34

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) Since the objective of this Regulation, namely the prevention of direct and indirect discrimination based on

Amendment

(34) 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, 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.

country of origin or place of *residence of consumers*, including geo-blocking, in commercial 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.

Amendment 35

Proposal for a regulation

Recital 35

Text proposed by the Commission

(35) This Regulation respects fundamental rights and observes the principle recognised in the Charter of Fundamental Rights of the European Union. In particular this Regulation seeks to ensure full respect of Articles 16 and 17 thereof,

Amendment

(35) This Regulation respects fundamental rights and observes the principle recognised in the Charter of Fundamental Rights of the European Union. In particular this Regulation seeks to ensure full respect of Articles **II**, 16 and 17 thereof,

Amendment 36

Proposal for a regulation

Article 1 – title

Text proposed by the Commission

Objective and scope

Amendment

Subject matter and scope

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

1. ***This 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***.

Amendment

1. ***The purpose of*** this Regulation ***is*** to contribute to the proper functioning of the internal market ***and achieve a high level of consumer protection*** by preventing ***geo-blocking*** based, directly or indirectly, on the ***country of origin or*** place of residence of ***consumers***. ***This Regulation defines situations in which differences in conditions of access cannot be justified by objective criteria under the provisions of Article 20(2) of Directive 2006/123/EC. Insofar as the provisions of this Regulation conflict with the provisions of Article 20(2) of Directive 2006/123/EC, the provisions of this Regulation shall prevail. Article 20(2) of Directive 2006/123/EC continues to fully apply to situations that are not covered by this Regulation and that fall within the scope of Directive 2006/123/EC.***

Amendment 38

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

(a) where the trader sells goods, provides services, or seeks to do so, in a Member State other than the Member State in which the ***customer*** has the place of residence ***or the place of establishment***;

Amendment

(a) where the trader sells goods ***or*** provides services, ***including non-audio-visual copyright-protected works and services***, or seeks to do so, in a Member State other than the Member State in which the ***consumer*** has the place of residence;

Amendment 39

Proposal for a regulation

Article 1 – paragraph 2 – point b

Text proposed by the Commission

(b) where the trader sells goods, provides services, or seeks to do so, in the same Member State as the one in which the *customer* has the place of *residence or place of establishment*, but the *customer* is a national of another Member State;

Amendment

(b) where the trader sells goods *or* provides services, *including non-audio-visual copyright-protected works and services*, or seeks to do so, in the same Member State as the one in which the *consumer* has the place of residence, but the *consumer* is a national of another Member State;

Amendment 40

Proposal for a regulation

Article 1 – paragraph 2 – point c

Text proposed by the Commission

(c) where the trader sells goods or provides services, or seeks to do so, in a Member State in which the *customer* is temporarily located without residing in that Member State *or having the place of establishment in that Member State*.

Amendment

(c) where the trader sells goods or provides services, *including non-audio-visual copyright-protected works and services*, or seeks to do so, in a Member State in which the *consumer* is temporarily located without residing in that Member State.

Amendment 41

Proposal for a regulation

Article 1 – paragraph 5

Text proposed by the Commission

5. 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 or her activities to the Member State where the consumer has the habitual residence or

Amendment

5. This Regulation shall *be without prejudice to* acts of Union law concerning judicial cooperation in civil matters. *Simple* compliance with this Regulation shall not be construed as implying that a trader directs his or her activities to the Member State where the consumer has the

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) 1215/2012.

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) 1215/2012. ***In particular, when a trader, acting in compliance with Articles 3, 4 and 5, does not block or limit consumers' access to its online interface, does not redirect them to a version of its online interface other than that which the consumer in question initially sought to access, regardless of their country of origin or place of residence, and does not apply different general access conditions in situations covered by this Regulation, that operator cannot be said for those reasons alone to be actively directing its activities towards the Member State where the consumer has the habitual residence or domicile. This shall however not apply when the existence of other additional elements, which go beyond simple compliance with the mandatory provisions, indicate that the trader directs his or her commercial or professional activities to such a Member State.***

Amendment 42

Proposal for a regulation Article 2 – paragraph 2 – point c

Text proposed by the Commission

(c) '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;

Amendment

deleted

Amendment 43

Proposal for a regulation Article 2 – paragraph 2 – point d

Text proposed by the Commission

(d) 'general conditions of access' means all terms, conditions and other information, including 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**;

Amendment

(d) 'general conditions of access' means all terms, conditions and other information, including sale prices, regulating the access of **consumers** 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 **consumer**;

Amendment 44

Proposal for a regulation

Article 2 – paragraph 2 – point e

Text proposed by the Commission

(e) 'goods' means any tangible movable item, with the exception of items sold by way of execution or otherwise by authority of law; **water, gas and electricity shall be considered as goods within the meaning of this Regulation where they are put up for sale in a limited volume or a set quantity**;

Amendment

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

Amendment 45

Proposal for a regulation

Article 2 – paragraph 2 – point f

Text proposed by the Commission

(f) '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 with respect to those goods or services;

Amendment

(f) 'online interface' means any software, including a website and applications, operated by or on behalf of a trader, which serves to give **consumers** access to the trader's goods or services with a view to engaging in a commercial transaction with respect to those goods or services;

Amendment 46

Proposal for a regulation

Article 2 – paragraph 2 – point h a (new)

Text proposed by the Commission

Amendment

(h a) 'geo-blocking' means unjustified access limitation to certain online interfaces through the use of technological measures or otherwise for geographical reasons.

Amendment 47

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. Traders shall not, through the use of technological measures or otherwise, block or limit ***customers'*** access to their online interface for reasons related to the ***nationality, place of residence*** or place of ***establishment*** of the ***customer***.

1. Traders shall not, through the use of technological measures or otherwise, block or limit ***consumers'*** access to their online interface for reasons related to the ***place of origin*** or place of ***residence*** of the ***consumer***.

Amendment 48

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Traders shall not, for reasons related 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***

Traders shall not, for reasons related to the ***country of origin or*** place of residence of the ***consumer***, redirect ***consumers*** to a version of their online interface that is different from the online interface which the ***consumer*** originally sought to access, by virtue of its layout, use of language or other characteristics that make it specific to ***consumers*** with a particular ***country of origin or*** place of residence, unless the ***consumer has given*** his or her explicit

gives his or her explicit consent prior to such redirection.

consent prior to such redirection, *which the consumer originally sought to access*.

Amendment 49

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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*.

Amendment

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

Amendment 50

Proposal for a regulation

Article 3 – paragraph 3

Text proposed by the Commission

3. 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* or to *customers* in certain territories is necessary in order to ensure compliance with a legal requirement in Union law or in the laws of Member States in accordance with Union law.

Amendment

3. The prohibitions set out in paragraphs 1 and 2 shall not apply where the blocking *or* limitation of *clients'* access *to the trader's online interface* or redirection with respect to certain *consumers* or to *consumers* in certain territories is necessary in order to ensure compliance with a legal requirement in Union law or in the laws of Member States in accordance with Union law, *to which the trader's activities are subject*.

Amendment 51

Proposal for a regulation

Article 3 – paragraph 4

Text proposed by the Commission

4. 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

Amendment

4. Where a trader blocks or limits access of *consumers* to an online interface or redirects *consumers* to a different version of the online interface in

compliance with paragraph 4, the trader shall provide a clear justification. That justification shall be given in the language of the online interface that the *customer* originally sought to access.

compliance with paragraph 3, the trader shall provide a clear justification *and explanation to the consumer*. That justification shall be given in the language of the online interface that the *consumer* originally sought to access.

Amendment 52

Proposal for a regulation

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

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*:

Amendment

1. Traders shall not apply different general conditions of access to their goods or services, for reasons related to the *country of origin* or place of *residence* of the *consumer*, *where*:

Amendment 53

Proposal for a regulation

Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) *where* the trader sells goods and those goods are not delivered cross-border to the Member State of the *customer* by the trader or on his or her behalf;

Amendment

(a) the trader sells goods and those goods are not delivered cross-border to the Member State of the *consumer* by the trader or on his or her behalf, *but are collected at a location agreed between the trader and the consumer in which the trader operates*;

Amendment 54

Proposal for a regulation

Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) where the trader provides electronically supplied services, other than services the main feature of which is the

Amendment

(b) 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;

sale in non-material form or the provision of access to and use of copyright protected works or other protected subject matter;

Amendment 55

Proposal for a regulation

Article 4 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) where the trader provides electronically supplied non-audio-visual works or services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter in respect of which the trader has the rights or has acquired the licence to use such content for all relevant territories;

Amendment 56

Proposal for a regulation

Article 4 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) *where* the trader provides services, other than those covered by point (b), and those services are supplied to the *customer* in the premises of the trader or in a physical location where the trader operates, in a Member State other than that of which the *customer* is a national or in which the *customer* has the place of residence *or the place of establishment*.

(c) the trader provides services, other than those covered by point (b), and those services are supplied to the *consumer* in the premises of the trader or in a physical location where the trader operates, in a Member State other than that of which the *consumer* is a national or in which the *consumer* has the place of residence.

Amendment 57

Proposal for a regulation

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. *The prohibition set out in paragraph 1 shall not prevent traders from offering general conditions of access, including sale prices, which differ from one Member State to another or which are offered to consumers in a specific territory or to specific groups of consumers.*

Amendment 58

Proposal for a regulation

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. *Traders shall have the possibility not to deliver goods or provide services across borders in cases where the delivery or the provision creates additional costs and/or requires additional arrangements on the trader's behalf.*

Amendment 59

Proposal for a regulation

Article 4 – paragraph 3 –subparagraph 1

Text proposed by the Commission

Amendment

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.

The prohibition set out in paragraph 1 shall apply **taking into account** specific **provisions** laid down in Union law or in the laws of Member States in accordance with Union law **by preventing** the trader from selling the goods or providing the services to certain **consumers** or to **consumers** in certain territories.

Amendment 60

Proposal for a regulation

Article 4 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

With respect to sales of books, the prohibition set out in paragraph 1 shall ***not preclude 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.

With respect to sales of books, the prohibition set out in paragraph 1 shall ***be without prejudice to specific legislation regarding pricing in*** Member States, in accordance with Union law.

Amendment 61

Proposal for a regulation

Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4 a

This Regulation shall not affect the rules applicable in the field of copyright and the neighbouring rights.

Justification

Access to copyright protected works or other protected subject matter and the use of such works or subject matter should continue to fall outside the scope of this regulation. This will rule out overlap with other items of EU legislation.

Amendment 62

Proposal for a regulation

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Traders shall not, for reasons related to the ***nationality***, place of residence ***or place of establishment*** of the ***customer***, 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, apply different conditions of payment for any sales of goods or provision of services, where:

1. Traders shall not, for reasons related to the ***place of origin*** or place of ***residence*** of the ***consumer***, 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, apply different conditions of payment for any sales of goods or provision of services, where:

Amendment 63

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

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

Amendment

Provisions imposing on traders obligations, in respect of passive sales, ***within the meaning of Regulation (EU) 330/2010*** to act in violation of this Regulation shall be automatically ***null and*** void.

Amendment 64

Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Member States shall lay down the rules on the ***sanctions*** applicable for infringements of the provisions of this Regulation and shall take all necessary ***measures*** to ensure that they are implemented. The ***sanctions*** provided for shall be effective, proportionate and dissuasive.

Amendment 65

Proposal for a regulation

Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The sanctions referred to in paragraph 2 should be communicated to the Commission and made publically available on the Commission's website.

Amendment 66

Proposal for a regulation

Article 9 – paragraph 1

1. By [date: two years after the entry into force of this Regulation] **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. That report shall, **where necessary**, be accompanied by a proposal **for an amendment** of this Regulation, **in light of legal, technical and economic developments**.

1. By [date: two years after the entry into force of this Regulation], **as required thereafter and at the latest** every **four** years thereafter, the Commission shall **assess the application** of this Regulation **in light of legal, technical and economic developments, and shall submit a respective report** to the European Parliament, the Council and the European Economic and Social Committee. That report shall, **if appropriate**, be accompanied by a **legislative** proposal **to review the current Regulation**.

The report referred to in the first paragraph shall include an assessment on possibly extending the scope of this Regulation, **notably on extending the prohibition of Article 4(1)(b) 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 as well as to other sectors, such as music, e-books, games and/or software**.

Furthermore, the report shall pay special attention to potential economic effects on SMEs and start-ups, the effectiveness of national enforcement measures referred to in Article 7 of this Regulation as well as focus on the use and protection of personal data.

Amendment 67

Proposal for a regulation Article 9 – paragraph 2

2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing whether the **prohibition of Article 4(1)(b)** should **also apply to electronically supplied services**, the main feature of which is the

2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing whether the **scope of this Regulation** should **be extended to cover additional sectors such as financial, transport, electronic**

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.

communication, healthcare and audio-visual services, provided that the trader has the rights *or has acquired the license to use electronically supplied audio-visual works, intangible goods or services*, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter for *all* relevant territories.

Amendment 68

Proposal for a regulation Article 11 – paragraph 3

Text proposed by the Commission

However, point (b) of Article 4(1) shall apply from 1 July 2018.

Amendment

deleted

PROCEDURE – COMMITTEE ASKED FOR OPINION

| | |
|---|--|
| Title | Addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market |
| References | COM(2016)0289 – C8-0192/2016 – 2016/0152(COD) |
| Committee responsible Date announced in plenary | IMCO 9.6.2016 |
| Opinion by Date announced in plenary | JURI 9.6.2016 |
| Associated committees - date announced in plenary | 19.1.2017 |
| Rapporteur Date appointed | Lidia Joanna Geringer de Oedenberg 12.9.2016 |
| Discussed in committee | 29.11.2016 31.1.2017 |
| Date adopted | 23.3.2017 |
| Result of final vote | +: 14 -: 3 0: 4 |
| Members present for the final vote | Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sajjad Karim, Sylvia-Yvonne Kaufmann, António Marinho e Pinto, Jiří Maštálka, Julia Reda, Pavel Svoboda, Tadeusz Zwiefka |
| Substitutes present for the final vote | Isabella Adinolfi, Daniel Buda, Jytte Guteland, Angelika Niebler, Virginie Rozière, Rainer Wieland |
| Substitutes under Rule 200(2) present for the final vote | Eugen Freund, Maria Noichl |

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 14 | + |
|-----------------|--|
| ALDE | Jean-Marie Cavada, António Marinho e Pinto |
| EFDD | Joëlle Bergeron |
| GUE/NGL Group | Kostas Chrysogonos, Jiří Maštálka |
| PPE | Pavel Svoboda |
| S&D | Eugen Freund, Lidia Joanna Geringer de Oedenberg, Jytte Guteland, Mary Honeyball, Sylvia-Yvonne Kaufmann, Maria Noichl |
| Verts/ALE Group | Max Andersson, Julia Reda |

| 3 | - |
|------|---------------------------|
| EFDD | Isabella Adinolfi |
| ENF | Marie-Christine Boutonnet |
| PPE | Angelika Niebler |

| 4 | 0 |
|-----|--|
| ECR | Sajjad Karim |
| PPE | Daniel Buda, Rainer Wieland, Tadeusz Zwiefka |

Key to symbols:

+ : in favour

- : against

0 : abstention

10.2.2017

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC
(COM(2016)0289 – C8-0192/2016 – 2016/0152(COD))

Rapporteur: Eva Kaili

SHORT JUSTIFICATION

The Regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market is an essential component in ensuring that customers and traders are allowed to have commercial transactions without having to experience any unjustified discrimination.

As a Regulation, it will impose binding obligations to traders from the date of its entry into force, so as to allow customers to access and purchase products, preventing the effects of discrimination based on nationality or place of residence or establishment or payment service. It aims to lift any unjustified barriers in e-commerce and to be a decisive step towards the completion of the Digital Single Market.

In addition to lifting the barriers leading to unjustified discrimination this Regulation clarifies that businesses are not obliged to conduct their activities all across Europe. This Regulation recognises the need for clarification with regards to the businesses' obligation to deliver to customers outside of their territory of activities. It is crucial to avoid adding additional burdens to the traders.

Furthermore, this Regulation acknowledges the importance of the establishment of a truly digital single market for all citizens and shows the direction for other important legal reforms that need to be made including but not limited to the copyright reform, the audiovisual sector reform and the reform in taxation. The same principles should be followed so as to lead to the creation of a user and business friendly Digital Single Market.

The present opinion aims to make improvements and clarifications to a number of points as set out below.

Content and scope of this Regulation

This Regulation's scope is aligned with that of the Directive 2006/123/EC so as to ensure legal

continuity and 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. With regards to copyrighted material and audiovisual content it is important to allow for the respective reforms to take place before assessing whether a potential inclusion would have beneficial effects for the consumers and the sectors alike.

Access to online interfaces

Prevention of access to online interfaces and redirecting are regarded as a practise that causes frustration to customers and this proposal addresses the issue, ensuring that customers would be able to access the interface of their liking at all times and regardless of their geographical location.

Discrimination of customers based on residence

The application of different general terms and conditions to customers as a product of discrimination based on residence is prohibited. However compliance with the provisions of the Regulation should not be considered as a restriction to traders to develop their activities at different Member States with targeted offers and different terms and conditions, provided that a foreign customer could access these products or services with the same contractual rights and obligations applicable to national transactions. Furthermore, compliance with this Regulation provide neither for an obligation to deliver goods cross-border nor for an obligation to accept to withdraw these from the country of establishment or of residence of the customer.

Discrimination based in the context of payments

The provisions of this Regulation provide that traders cannot reject or otherwise discriminate concerning payment instruments. In further detail and with regards to card based payment instruments, when a certain payment brand and category are being accepted, the trader will be obliged to accept the same brand and category regardless of the country of origin of that payment method. Such a provision does not oblige traders to accept all card based payment instruments.

Enforcement and assistance to customers

It is proposed that Member States designate bodies to ensure effective enforcement of this Regulation and that those bodies also facilitate customers when in need of assistance.

Review of the Regulation

The first evaluation will be of great importance, as the European Commission should assess the scope and application of this proposal, taking into consideration the legal developments in the fields of copyright, taxation, audiovisual services and portability of online content.

Date of application

This Regulation shall apply from 6 months from the day of its publication, which will enable customers to benefit from the lifting of the obstacles that cause unjustified discrimination.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Title

Text proposed by the Commission

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Amendment

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Amendment 2

Proposal for a regulation

Citation 1 a (new)

Text proposed by the Commission

Amendment

Having regard to Protocol No 1 of the Treaty on the Functioning of the European Union on the role of national parliaments in the European Union,

Amendment 3

Proposal for a regulation

Citation 1 b (new)

Text proposed by the Commission

Amendment

Having regard to Protocol No 2 of the Treaty on the Functioning of the European Union on the application of the principles of subsidiarity and proportionality,

Amendment 4

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) 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 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 the access to their online interfaces, such as websites and apps, of customers from other Member States wishing to engage in cross-border commercial transactions (a practice 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 from other Member States, both online and offline. Whereas there may sometimes be objective justifications for such differential treatment, in other cases traders deny consumers wishing to engage in cross-border commercial transactions access to goods or services, or apply different conditions in this regard, for ***purely commercial*** reasons.

Amendment

(1) 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 undermined by private parties putting in place obstacles ***of various types and forms*** inconsistent with internal market freedoms. That occurs where traders operating in one Member State block or limit the access to their online interfaces, such as websites and apps, of customers from other Member States wishing to engage in cross-border commercial transactions (a practice 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 from other Member States, both online and offline. Whereas there may be objective justifications ***in exceptional cases***, for such differential treatment, in other cases traders deny consumers wishing to engage in cross-border commercial transactions access to goods or services, or apply different conditions in this regard, for ***non-objective*** reasons. ***According to analyses carried out, for the impact assessment of the European Commission, removing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market could contribute to a 1.1% expansion in market size and an, on average, -0.5% to -0.6% fall in prices. Additionally and as the result of the Commission's stakeholder consultation demonstrates, it***

could contribute to lower levels of customer frustration as unjustified geoblocking is one of its primary sources.

Amendment 5

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) In this manner certain traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus 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 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. Clarifying in which situations there can be no justification for differential treatment of this kind should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

Amendment

(2) In this manner certain traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus restricting the rights of customers and preventing them from benefitting from a wider choice *of goods and services* and optimal conditions. Such discriminatory practices are an important factor contributing 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. Clarifying in which situations there can be no justification for differential treatment of this kind should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

Amendment 6

Proposal for a regulation

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Although the present Regulation aims to address geo-blocking and hence taking down a barrier to the functioning of the internal market, it needs to be kept in mind that many differences in Member States' legislation, such as different

national standards, or a lack of mutual recognition or harmonisation at Union level, still constitute significant barriers that continue to lead to fragmentation in the single market, and in this manner often force traders to engage in geo-blocking practices. Therefore the European Parliament, the Council and the Commission should continue to address these barriers with a view to reduce market fragmentation and complete the Single Market.

Amendment 7

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council¹⁷, 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, 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.

¹⁷ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the

Amendment

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council¹⁷, 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, 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. ***Consequently, this Regulation should apply to traders as well as service providers, and to goods as well as services.***

¹⁷ 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).

internal market (OJ L 376, 27.12.2006, p. 36).

Amendment 8

Proposal for a regulation

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) This Regulation aims to clarify Article 20 of the Directive 2006/123/EC. It should not be construed as replacing Directive 2006/123/EC, either as regards the scope of that Directive, where this Regulation abides by the same principles, excluding the activities referred to in Article 2(2) of Directive 2006/123/EC from the scope of its application, or as regards its effect, as the application of Directive 2006/123/EC is independent of, and complementary to, that of this Regulation. This Regulation may not restrict the entrepreneurial freedom and freedom of contract as defined in Article 16 of the Charter of Fundamental Rights of the European Union.

Amendment 9

Proposal for a regulation

Recital 4

Text proposed by the Commission

Amendment

(4) 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.

(4) 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. ***These measures should maintain balance between consumer protection for customers and economic and contractual freedom for traders. In this respect, any disproportionate costs or administrative burden or the obligation to deliver to all***

Member States should not be imposed on traders. Furthermore, the new obligations imposed on Member States should not extend beyond what is necessary to implement the new rules.

Amendment 10

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) 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 customers' 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.

Amendment

(5) 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 **prevent** direct as well as indirect discrimination. **By indirect discrimination it is understood the application of distinguishing criteria other than customer's nationality, place of residence or place of establishment which lead either deterministically or statistically to the same result as the direct application of those same criteria. It also covers** 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, 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.

Amendment 11

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Recital 29 of Directive 2001/29/EC of the European Parliament and of the Council^{1a} establishes that the question of exhaustion does not arise in the case of services and on-line services in particular.

^{1a} **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**

Amendment 12

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

(10) 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 of the European Parliament and of the Council²⁴ and (EU) 1215/2012 of the European Parliament and of the Council²⁵, 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.

(10) This Regulation should **be without prejudice to** 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 of the European Parliament and of the Council²⁴ and (EU) 1215/2012 of the European Parliament and of the Council²⁵, 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. **For that reason, and in order to ensure legal certainty for traders complying with this Regulation, it should be made clear that the mere fact that a trader makes its online interface**

accessible for customers from another Member State or does not apply different general conditions of access in the cases laid down in this Regulation, including where relevant through the conclusion of contracts, or accepts payment instruments from another Member State, should not in itself be regarded, for the purpose of determining the applicable law and jurisdiction, as indicating that the trader's activities are directed to the Member State of the customer, unless additional elements are proved from which the existence of an intention on the part of the trader to direct activities to such Member States in accordance with Union law can be concluded.

²⁴ 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).

²⁵ 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).

²⁴ 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).

²⁵ 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).

Amendment 13

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) The discriminatory practices that this Regulation seeks to address typically take place through 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, and that are made available to the public at large. Such general conditions of access include inter alia prices, payment

Amendment

(11) The discriminatory practices that this Regulation seeks to address typically take place through 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, and that are made available to the public at large. Such general conditions of access include inter alia prices, **requirements**

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 conditions 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 general conditions of access for the purposes of this Regulation.

based on telephone prefixes, 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 conditions 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 general conditions of access for the purposes of this Regulation.

Justification

Discrimination can occur when traders require a customer to have a phone number with a specific country code to complete a transaction

Amendment 14

Proposal for a regulation

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Differing pricing arrangements in individual Member States should not count as a discriminatory practice.

Amendment 15

Proposal for a regulation

Recital 12

Text proposed by the Commission

Amendment

(12) 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

(12) 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, subject to compliance with the rules on competition.

customers purchasing a good or a service for resale, ***commercial rent, or transformation and processing of purchased goods***, 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, subject to compliance with the rules on competition. ***Customers should only be safeguarded from discrimination for reasons related to their nationality, place of residence or place of establishment when purchasing a good or service for end use.***

Amendment 16

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) 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 their nationality, place of residence or place of establishment. 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. However, that prohibition of discrimination with respect to access to online interfaces should not be understood as creating an obligation for the trader to engage in commercial transactions

Amendment

(14) 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 ***but not limited to them***, traders ***or any other parties acting on their behalf, including intermediaries and operators of online interfaces for the purposes of access***, 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 their nationality, place of residence or place of establishment. Such technological measures can encompass, ***but not be limited to***, in particular, any technologies used to determine the physical location of the customer, including the tracking of that by means of IP address, ***surfing history and/or patterns, GSM tracking or localisation***, coordinates obtained through a global navigation satellite system or data related to a

with customers.

payment transaction. However, that prohibition of discrimination with respect to access to online interfaces should not be understood as creating an obligation for the trader to engage in commercial transactions with customers.

Amendment 17

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) 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 laws of Member States in accordance with Union law. 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 thus be able to block, limit the access or redirect certain customers or customers in certain territories to an online interface, insofar as that is necessary for that reason. Where a trader blocks or limits access to an online interface in order to ensure compliance with a legal requirement in Union law or in the laws of Member States in accordance with Union law, the trader should provide a clear explanation.

Amendment 18

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) 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 laws of Member States in accordance with Union law. 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 thus be able to block, limit the access or redirect certain customers or customers in certain territories to an online interface, insofar as that is necessary for that reason.

Amendment

(16) 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 laws of Member States in accordance with Union law. 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 thus be able to block, limit the access or redirect certain customers or customers in certain territories to an online interface, insofar as that is necessary for that reason.

Furthermore, the application of this Regulation should not prevent Member States from applying their fundamental rules and principles relating to the freedom of press and freedom of expression.

Amendment 19

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) 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

Amendment

(17) 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 commercial transactions under the same conditions as a local customer and 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. However, the prohibition applicable in those situations should not be understood as precluding traders from directing their activities at different Member States or certain groups of customers with targeted offers and differing terms and conditions, including through the setting-up of country-specific online interfaces.

down in this Regulation, to engage in commercial transactions under the same conditions as a local customer and 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, ***or any other indirect means correlated to these criteria, cannot be considered as objectively justified in the sense of Article 20 of Directive 2006/123/EC.*** 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. However, the prohibition applicable in those situations should not be understood as precluding traders from directing their activities at different Member States or certain groups of customers with targeted offers and differing terms and conditions, including through the setting-up of country-specific online interfaces. ***Should different conditions be applied to services or goods for objective reasons, however, this will not constitute unlawful discrimination as defined in Article 20 and in Recital 95 of Directive 2006/123/EC.***

Amendment 20

Proposal for a regulation Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Article 6 of Regulation (EC) No 593/2008 (Rome I) governs consumer contracts. Pursuant to that article, a contract which a consumer has concluded with a trader is subject to the law of the State in which the consumer has his or her normal place of residence, provided that the trader, by any means, directs a professional or commercial activity to that country. In the cases defined in Article 4(1)(a) to (c), the provider does not direct

his activity to the consumer's Member State. In such cases the Rome I Regulation stipulates that the contract is not subject to the law of the consumer's State of residence. The principle of freedom of choice (Article 3 of the Rome I Regulation) applies here. The same applies to jurisdiction, which is governed by Regulation (EU) No 1215/2012.

Amendment 21

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the customer resides. 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 the Member State of the trader. That may mean that a foreign customer will have to pick up the good in that Member State, or in a different Member State to which the trader delivers. In this situation, there is no need to register for value added tax ("VAT") in the Member State of the customer, nor arrange for the cross-border delivery of goods.

Amendment

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the customer resides. In that situation, *provided that a contract is concluded between the trader and the customer*, the customer should be able to purchase goods, under exactly the same conditions, including conditions relating to the delivery of the goods, as similar customers who are residents of the Member State of the trader. That may mean that a foreign customer will have to pick up the good in that Member State, or in a different Member State to which the trader delivers. In this situation, there is no need to register for value added tax ("VAT") in the Member State of the customer, nor arrange for the cross-border delivery of goods. *The trader must not be compelled to deliver the goods.*

Amendment 22

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) The second situation is where the

Amendment

(19) The second situation is 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, such as cloud services, data warehousing services, website hosting and the provision of firewalls. 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 on VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/2011²⁶.

²⁶ 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).

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, such as cloud services, data warehousing services, website hosting and the provision of firewalls. 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 on VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/2011²⁶. ***Any difference in the final price that might occur as a result of the application of different VAT rates in accordance with applicable legislation in the place of consumption should not entail the application of different conditions of access.***

²⁶ 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).

Amendment 23

Proposal for a regulation Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The prohibition of discrimination in those situations should not be considered as a restriction on the right of traders to develop their business strategy by directing their activities at different Member States or certain groups of customers with targeted offers and different terms and conditions, including country- or region-specific online interfaces. However, where a foreign customer seeks access to such online interfaces and specific offers, in

accordance with one given set of terms and conditions, he or she should enjoy the same contractual rights, and be subject to the same obligations, as those applicable to national transactions. Territorial limitations on the provision of after-sales services deriving from terms and conditions to which the customer has agreed, in accordance with Union law and the applicable national law enacted pursuant thereto, should be permissible under this Regulation. Compliance with this Regulation should not entail any obligation on traders to deliver goods across borders or any obligation to take goods back from the customer's country of establishment or residence.

Amendment 24

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) Traders falling under the special scheme provided in Chapter 1 of Title XII of Council Directive 2006/112/EC²⁷ are not required to pay VAT. For those traders, when providing electronically supplied services, the prohibition of applying different general conditions of access for reasons related to the nationality, place of residence or place of establishment of the customer 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 such time as such a scheme is applicable.

²⁷ Council Directive 2006/112/EC of 28

Amendment

(22) Traders falling under the special scheme provided in Chapter 1 of Title XII of Council Directive 2006/112/EC²⁷ 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 the nationality, place of residence or place of establishment of the customer 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 such time as such a scheme is applicable.

²⁷ Council Directive 2006/112/EC of 28

November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1–118)

November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1–118)

Amendment 25

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) Under Union law, traders are in principle free to decide which means of payment they wish to accept, **including** payment **brands**. However, once this choice has been made, in view of the existing legal framework for payment services, there are no reasons for traders to discriminate customers within the Union by refusing certain commercial transactions, or by otherwise applying certain different conditions of payment in respect of those transactions, for reasons related to the nationality, place of residence or place of establishment of the customer. In this 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 be expressly prohibited as well. It should be further recalled that Regulation (EU) No 260/2012 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.

Amendment

(24) 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^{1a} and Directive 2007/64/EC of the European Parliament and of the Council^{1b}, traders accepting a card-based payment instrument of a specific payment brand and category are under no obligation to accept card-based payment instruments of the same category but of a different brand, or of the same brand but of a different category.*** However, once this choice has been made, in view of the existing legal framework for payment services, there are no reasons for traders to discriminate customers within the Union by refusing certain commercial transactions, or by otherwise applying certain different conditions of payment in respect of those transactions, for reasons related to the nationality, place of residence or place of establishment of the customer. In this 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 be expressly prohibited as well. ***The European Commission should assess the use of incentives to promote the use of European payment services. Moreover, the Commission should assess whether to provide the legal framework that allows, subject to the freedom of contract***

*principle, the protection of undertakings and consumers when the transaction is carried through alternative modes of payment, including virtual currencies, other blockchain type transactions and e-wallets. The personal data created by the e-commerce transactions should be stored in data centres in the Union, regardless of the location that the seat of the payment company is incorporated, unless the transfer of such data to a third country takes place in accordance with Regulation (EU) 2016/679 and ensures adequate levels of protection for the consumers and the undertakings. It should be further recalled that Regulation (EU) No 260/2012 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. **Traders should remain free to request charges for the use of a payment instrument. However, this right should be subject to the restrictions introduced by Article 62 of Directive (EU) 2015/2366^{1c}, meaning amongst others that these additional charges cannot be higher than the actual cost the trader has incurred.***

^{1a} 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).

^{1b} Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

^{1c} 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

Amendment 26

Proposal for a regulation

Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) In the case of any measure taken by a government, central bank or other regulatory body to limit the flow of capital in and out of a Member State's economy, such as capital restrictions, this Regulation should continue to apply in accordance with Union law and the applicable national law and relative restrictions imposed in accordance with Union law. Consequently, any direct or indirect discrimination based on the customer's nationality, place of residence or place of establishment, or the location of the payment account, of the payment service provider or of the place of issue of the payment instrument within the Union should be prohibited.

Amendment 27

Proposal for a regulation

Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) Data generated by e-commerce and online transactions should conform to the legislative framework on traffic and location of data, data retention, data protection and data analysis, ensuring full compliance with Union law. Network and information systems should operate in accordance with the relevant provisions of Directive (EU) 2016/1148 of the European Parliament and the Council^{1a}, ensuring maximum security of networks

and information systems.

^{1a} Directive (EU) 2016/1148 of the European Parliament and the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

Amendment 28

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) *Consumers* should be in the position to receive assistance from responsible authorities facilitating the resolution of conflicts with traders, arising from the application of this Regulation, including by way of a uniform complaint form.

Amendment

(28) *Customers* should be in the position to receive assistance from responsible authorities facilitating the resolution of conflicts with traders, arising from the application of this Regulation, including by way of a uniform complaint form.

Amendment 29

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

1. This 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.

Amendment

1. This 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 *and by defining, inter alia, situations where different treatment, as referred to in Article 20(2) of Directive 2006/123/EC is under no circumstances justifiable, excluding the cases where different conditions could be applied to services or goods for objective reasons according the same Article of Directive 2006/123/EC.*

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. This Regulation may not restrict the entrepreneurial freedom and freedom of contract enshrined in Article 16 of the Charter of Fundamental Rights of the European Union.

Amendment 31

Proposal for a regulation

Article 1 – paragraph 5

Text proposed by the Commission

Amendment

5. 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 or her activities to the Member State where the consumer has the 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) 1215/2012.

5. 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 or her activities to the Member State where the consumer has the 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) 1215/2012. ***In particular, where a trader, in accordance with this Regulation ensures access to their online interface for customers regardless of their nationality or place of residence, does not apply different general conditions of access when selling goods or providing services in cases laid down in this Regulation or where the trader accepts payments instruments issued in a another Member State on a non-discriminatory basis, the trader shall not be considered as directing his or her activities to the Member State, where the consumer has the habitual residence or domicile, unless the existence of other additional elements***

is established, indicating the overall intention of the trader to direct his or her activity to such Member State.

Amendment 32

Proposal for a regulation Article 2 – paragraph 1

Text proposed by the Commission

For the purposes of this Regulation, the *definitions* set out in Article 7 of Implementing Regulation (EU) No 282/2011, Article 2(10), (20) and (30) of Regulation (EU) 2015/751 *of the European Parliament and Council*³² and Article 4(8), (9), (11), (12), (14), (23), (24) and (30) of Directive (EU) 2015/2366 shall apply.

Amendment

For the purposes of this Regulation, the *definition of the term 'electronically supplied services'* set out in Article 7 of Implementing Regulation (EU) No 282/2011, *the definitions of the terms 'interchange fee', 'card-based payment instrument', 'payment brand', 'debit card', 'credit card' and 'prepaid card' respectively set out in* Article 2(10), (20) and (30), (33), (34) *and (35)* of Regulation (EU) 2015/751 and *the definitions of the terms 'payment transaction', 'payer', 'payment service provider', 'payment account', 'payment instrument', 'direct debit', 'credit transfer' and 'strong customer authentication' respectively set out in* Article 4(5), (8), (11), (12), (14), (23), (24) and (30) of Directive (EU) 2015/2366 shall apply.

³² *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).*

Amendment 33

Proposal for a regulation Article 2 – paragraph 2 – introductory part

Text proposed by the Commission

The following definitions shall also apply:

Amendment

The following definitions shall also apply

for the purposes of this Regulation:

Amendment 34

Proposal for a regulation

Article 2 – paragraph 2 – point c

Text proposed by the Commission

(c) '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;

Amendment

(c) '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, ***rental, transformation or processing on a commercial scale. The intention for end-use by that consumer or undertaking, is the only one covered by this Regulation;***

Amendment 35

Proposal for a regulation

Article 2 – paragraph 2 – point d

Text proposed by the Commission

(d) 'general conditions of access' means all terms, conditions and other information, including 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;

Amendment

(d) 'general conditions of access' means all terms, conditions and other information, including sale prices, ***requirements based on telephone prefixes***, 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;

Justification

Discrimination can occur when traders require a customer to have a phone number with a specific country code to complete a transaction

Amendment 36

Proposal for a regulation
Article 2 – paragraph 2 – point f

Text proposed by the Commission

(f) '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 with respect to those goods or services;

Amendment

(f) 'online interface' means any software, including a website, **or some part thereof**, 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 with respect to those goods or services;

Amendment 37

Proposal for a regulation
Article 3 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Traders shall not, for reasons related 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 gives his or her explicit consent prior to such redirection.

Amendment

Traders shall not, for reasons related 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 **first** 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 gives his or her explicit consent prior to such redirection.

Amendment 38

Proposal for a regulation
Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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.

Amendment

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

Amendment 39

Proposal for a regulation Article 3 – paragraph 3

Text proposed by the Commission

3. 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 or to customers in certain territories is necessary in order to ensure compliance with a legal requirement in Union law or in the laws of Member States in accordance with Union law.

Amendment

3. The prohibitions set out in paragraphs 1 and 2 shall not apply where the blocking ***of the online interface, the*** limitation of access or ***the*** redirection with respect to certain customers or to customers in certain territories is necessary in order to ensure compliance with a legal requirement in Union law or in the laws of Member States in accordance with Union law.

Amendment 40

Proposal for a regulation Article 3 – paragraph 4

Text proposed by the Commission

4. 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 paragraph 4, the trader shall provide a clear justification. That justification shall be given in the language of the online interface that the customer ***originally*** sought to access.

Amendment

4. 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 paragraph 3, the trader shall provide a clear ***explanation to the customers concerned***. That ***explanation*** shall be given in the language of the online interface that the customer ***first*** sought to access.

Amendment 41

Proposal for a regulation Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. Traders shall not apply different general conditions of access to their goods or services, for reasons related to the

Amendment

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*:

nationality, place of residence or place of establishment of the customer, in *situations where the customer seeks to*:

Amendment 42

Proposal for a regulation Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) *where the trader sells goods* and those goods are not delivered cross-border to the Member State of the customer by the trader or on his or her behalf;

Amendment

(a) *buy goods from a trader* and those goods are not delivered cross-border to the Member State of the customer by the trader or on his or her behalf;

Amendment 43

Proposal for a regulation Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) *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;

Amendment

(b) *receive* electronically supplied services *from a 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;

Amendment 44

Proposal for a regulation Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) *where the trader provides* services, other than those covered by point (b), *and those services are supplied to the customer in the premises of the trader or in a physical location where the trader operates, in a Member State other than that of which the customer is a national or in which the customer has the* place of

Amendment

(c) *receive* services, other than those covered by point (b), *from a trader in a Member State* where *that* trader operates, *and where that* customer is a national *of, or has a* place of residence *or establishment in, another Member State.*

residence *or the place of establishment*.

Amendment 45

Proposal for a regulation

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

1. Traders shall not, for reasons related to the nationality, place of residence or place of establishment of the customer, 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, apply different conditions of payment for any sales of goods or provision of services, where:

Amendment

1. Traders shall not, ***within the range of electronic payment means, namely credit transfers, direct debits or card-based payment instruments of a specific brand and category***, for reasons related to the nationality, place of residence or place of establishment of the customer, 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, apply different conditions of payment for any sales of goods or provision of services, where:

Amendment 46

Proposal for a regulation

Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) ***those payments are made through electronic transactions by credit transfer, direct debit or a card-based payment instrument within the same payment brand;***

Amendment

deleted

Amendment 47

Proposal for a regulation

Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) the ***payee*** can ***request*** strong customer authentication ***by the payer***

Amendment

(b) the ***identity of the payer or the validity of the use of the payment means***

pursuant to *the* Directive (EU) 2015/2366;
and

can ***be verified by*** strong customer
authentication pursuant to Directive (EU)
2015/2366; and

Amendment 48

Proposal for a regulation

Article 5 – paragraph 1 – point c

Text proposed by the Commission

(c) the ***payments*** are in a currency that
the ***payee*** accepts.

Amendment

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

Amendment 49

Proposal for a regulation

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

***1a. The prohibition set out in
paragraph 1 shall not preclude trader's
right to withhold the goods or the
provision of the service based on objective
reasons, until the payment transaction is
correctly initiated.***

Amendment 50

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

2. The prohibition set out in paragraph
1 shall not preclude traders' possibility to
request charges for the use of a card-based
payment instrument for which interchanges
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. Those
charges shall not exceed the costs borne by
the trader for the use of the payment

2. The prohibition set out in paragraph
1 shall not preclude traders' possibility to
request charges for the use of a card-based
payment instrument for which interchanges
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
national prohibitions or limitations of the
right to request charges for the use of
payment instruments have been***

instrument.

introduced in the laws of the Member States pursuant to Article 62(5) of Directive (EU) 2015/2366. Those charges shall not exceed the costs borne by the trader for the use of the payment instrument.

Amendment 51

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

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

Amendment

Contractual provisions imposing on traders obligations, in respect of passive sales *within the meaning of Commission Regulation (EU) No 330/2010*, to act in violation of this Regulation shall be automatically *null and* void.

Amendment 52

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

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 this Regulation.

Amendment

1. Each Member State shall designate *an existing* body or bodies responsible for the enforcement of this Regulation *with regard to traders and customers. Without prejudice to other information and cooperation mechanisms, those bodies shall be responsible for ensuring cross-border cooperation with bodies in other Member States through the appropriate means.* Member States shall ensure that adequate and effective means exist with the body or bodies designated in order to enforce compliance with this Regulation.

Amendment 53

Proposal for a regulation Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where no other information and cooperation mechanisms exist, existing structures shall be used. The Internal Market Information System ('IMI') established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council^{1a} shall be used for the purposes of this Article.

^{1a} Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

Amendment 54

Proposal for a regulation Article 8 – title

Text proposed by the Commission

Amendment

Assistance to ***consumers***

Assistance to ***customers***

Amendment 55

Proposal for a regulation Article 8 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Traders shall indicate the general conditions of access and possible restrictions in accordance with this Regulation at the latest at the beginning of the ordering process in accordance with Article 8 of Directive 2011/83/EU.

Amendment 56

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

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. *Each Member State shall designate a body or bodies responsible for that task.*

Amendment

1. Each Member State shall confer responsibility for providing practical assistance *and information to customers on the* body or bodies *tasked with enforcement, in the* case of a dispute between a *customer* and a trader arising from the application of this Regulation.

Amendment 57

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

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 assist those bodies in developing this model form.

Amendment

2. The bodies referred to in paragraph 1 shall offer *customers* a uniform model form to file complaints to the bodies referred to in paragraph 1 *of this Article* and in Article 7(1). The Commission shall assist those bodies in developing this model form. *They shall be responsible, inter alia, for accepting complaints from customers, forwarding complaints to bodies in other Member States and facilitating communication between the customer and the trader in order to facilitate the resolution of the dispute.*

Amendment 58

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

1. By [date: two years after the entry into force of this Regulation] and every *five* years thereafter, the Commission shall

Amendment

1. By [date: two years after the entry into force of this Regulation] and every *three* years thereafter, the Commission

report on the evaluation of this Regulation to the European Parliament, the Council and the European Economic and Social Committee. That report shall, where necessary, be accompanied by a proposal for an amendment of this Regulation, in light of legal, technical and economic developments.

shall report on the evaluation of this Regulation to the European Parliament, the Council and the European Economic and Social Committee. That report shall, where necessary, be accompanied by a proposal for an amendment of this Regulation, in light of legal, technical and economic developments.

Amendment 59

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing whether the prohibition of Article 4(1)(b) 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, provided that the trader has the requisite rights for the relevant territories.

deleted

Justification

Access to copyright protected works or other protected subject matter and the use of such works or subject matter should continue to fall outside the scope of this regulation. This will rule out overlap with other items of EU legislation.

Amendment 60

Proposal for a regulation

Article 11 – paragraph 2

Text proposed by the Commission

Amendment

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

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

PROCEDURE – COMMITTEE ASKED FOR OPINION

| | |
|---|---|
| Title | Addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market |
| References | COM(2016)0289 – C8-0192/2016 – 2016/0152(COD) |
| Committee responsible Date announced in plenary | IMCO 9.6.2016 |
| Opinion by Date announced in plenary | ITRE 9.6.2016 |
| Rapporteur Date appointed | Eva Kaili 6.7.2016 |
| Discussed in committee | 9.11.2016 |
| Date adopted | 26.1.2017 |
| Result of final vote | +: 44 –: 13 0: 0 |
| Members present for the final vote | Bendt Bendtsen, Xabier Benito Ziluaga, José Blanco López, David Borrelli, Jerzy Buzek, Angelo Ciocca, Edward Czesak, Jakop Dalunde, Pilar del Castillo Vera, Christian Ehler, Fredrick Federley, Ashley Fox, Theresa Griffin, András Gyürk, Rebecca Harms, Roger Helmer, Hans-Olaf Henkel, Eva Kaili, Seán Kelly, Jeppe Kofod, Jaromír Kohlíček, Peter Kouroumbashev, Miapetra Kumpula-Natri, Janusz Lewandowski, Paloma López Bermejo, Edouard Martin, Csaba Molnár, Nadine Morano, Dan Nica, Angelika Niebler, Miroslav Poche, Carolina Punset, Michel Reimon, Herbert Reul, Algirdas Saudargas, Neoklis Sylikiotis, Dario Tamburrano, Patrizia Toia, Evžen Tošenovský, Claude Turmes, Vladimir Urutchev, Henna Virkkunen, Martina Werner, Lieve Wierinck, Hermann Winkler, Anna Záborská, Flavio Zanonato, Carlos Zorrinho |
| Substitutes present for the final vote | Amjad Bashir, Michał Boni, Gunnar Hökmark, Werner Langen, Olle Ludvigsson, Massimiliano Salini, Anne Sander, Davor Škrlec, Pavel Telička |

24.1.2017

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on the Internal Market and Consumer Protection

on the proposal for a Regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC
(COM(2016)0289 – C8-0192/2016 – 2016/0152(COD))

Rapporteur: Therese Comodini Cachia

SHORT JUSTIFICATION

Purpose and scope

The Commission's proposal seeks to enhance access to cross-border goods and services by preventing direct and indirect discrimination by traders based on a customer's nationality, place of residence or place of establishment. In so doing, the proposal further refines the rather loosely defined non-discrimination principle in Article 20(2) of the Services Directive (2006/123/EC).

In specific terms, the proposal sets out to prohibit unjustified forms of geo-blocking whereby traders either block access to a specific online interface or else redirect customers to a different online interface without prior consent (Article 3). It also requires traders to apply consistent general conditions of access to customers irrespective of their nationality, place of residence or place of establishment – subject to the limitation on scope detailed below (Article 4). And finally, it bans discrimination for reasons related to payment (Article 5). It is important to emphasise that the Commission proposal does not introduce an “obligation to deliver”, meaning that traders not seeking to target cross-border markets are not required to deliver goods or services, but only to allow customers to purchase them under the same conditions as “target customers” (e.g. by collecting them from the trader's premises).

With regard to the scope, there are two important aspects to underscore. Firstly, the proposed Regulation applies to “customers” – understood both as “consumers” (i.e. natural persons) and undertakings where they are transacting as end users and not where they are making purchases for resale. Secondly, the proposed Regulation does not apply to “electronically supplied services, other than services the main feature of which is the provision of access to and use of copyright protected works and other protected subject matter” (Article 4(1b)), meaning that e-books or music streaming services, for example, are outside the scope. Nonetheless, the Commission inserts a review clause (Article 9) which states that the first review – two years after the Regulation enters into force – will focus specifically on whether this derogation should

be lifted.

Overall position of the Rapporteur

The Rapporteur supports the overall direction and balance of the Commission proposal and considers that it represents an important step in further developing the internal market. A fully-functioning single market is vitally important for cultural industries and should, in the longer term, help to promote cultural diversity and a common cultural heritage across the European Union.

Apart from a series of amendments designed to clarify some provisions or improve their readability, the amendments tabled by the Rapporteur focus on two chief aspects:

The review clause

The Rapporteur supports both the Commission's decision to leave "electronically supplied services, other than services the main feature of which is the provision of access to and use of copyright protected works and other protected subject matter" outside the scope of the current Regulation and to assess this derogation as part of the first review after two years. Cultural goods and services – such as e-books and music streaming services – have distinct business models and specific characteristics that require further and careful examination. The Rapporteur believes that it is right to re-examine their inclusion after two years, but insists that the review process must pay particular heed to the specific nature of cultural goods and services.

The notion of customer and assistance in the case of a dispute

As outlined above, the proposed Regulation would apply to consumers and to undertakings where they are making commercial transactions as end users and not for resale – covered collectively under the term "customers" as defined in Article 2(c). The Rapporteur welcomes this approach. However, in the proposed provisions on assistance and dispute settlement (Article 8), the Commission's proposal provides for support to be given by designated bodies only to consumers. In the opinion of the Rapporteur, this support should be provided to all "customers" within the meaning of the Regulation. This is important both to ensure consistency and because many micro and small enterprises, including associations with legal personality, would be severely disadvantaged by being forced to rely solely on the courts for redress. It is particularly important for many cultural operators who are often either voluntary associations or very small businesses. Furthermore, the disputes which the designated bodies are to assist customers with relate directly to the implementation of this Regulation and not to any other issues that might arise from the commercial transaction.

The amendments tabled by the Rapporteur retain the non-prescriptive approach favoured by the Commission, leaving Member States the freedom to decide which bodies should be designated and how they should provide assistance in the case of a dispute.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) ***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 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 the access to their online interfaces, such as websites and ***apps***, of customers from other Member States wishing to engage in cross-border commercial transactions (a practice 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 from other Member States, both online and offline. Whereas there may sometimes be objective justifications for such differential treatment, in other cases traders deny consumers wishing to engage in cross-border commercial transactions access to goods or services, or apply different conditions in this regard, for purely commercial reasons.

Amendment

(1) ***It is imperative to establish*** an area without internal frontiers in which the free movement of inter alia goods and services is ensured, ***as well as to achieve the objectives set in the New Digital Market Strategy. Remaining unjustified barriers should be removed in order to ensure a fully functioning single market for goods and services, notably in the cultural sector, which is of crucial importance in order to promote cultural diversity, disseminate culture and engender a common cultural heritage across the Union. It is not sufficient to abolish*** only State barriers ***since this*** can be undermined by private parties putting in place obstacles inconsistent with internal market freedoms. ***Such barriers occur*** where traders operating in one Member State block or limit the access to their online interfaces, such as websites and ***applications***, of customers from other Member States wishing to engage in cross-border commercial transactions (a practice known as geo-blocking). ***They also occur*** 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 from other Member States, both online and offline. Whereas there may sometimes be objective justifications for such differential treatment ***as provided for in Directive 2006/123/EC***, in other cases traders deny consumers wishing to engage in cross-border commercial transactions access to goods or services, or apply different conditions in this regard, for purely commercial reasons.

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) In this manner certain traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus 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 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.

Clarifying in which *situations* there can be no justification for differential treatment of this kind should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

Amendment

(2) In this manner certain traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus 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 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. ***This Regulation specifies the situations*** in which there can be no justification for differential treatment of this kind, ***which*** should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

Amendment 3

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council¹⁷, 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,

Amendment

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council¹⁷, 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,

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.

¹⁷ 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).

Amendment 4

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) 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 customers' 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

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, **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.

¹⁷ 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).

Amendment

(5) This Regulation aims **to prevent** 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 customers' 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 **of** language made or the Member State where the

customer's payment instrument has been issued.

customer's payment instrument has been issued.

Amendment 5

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) 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. As a consequence, the provisions of this Regulation should apply inter alia to non-audio-visual 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 provided for in Article 4 ***and the subsequent evaluation of that exclusion*** as provided for in Article 9. 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 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.

Amendment

(6) 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. As a consequence, the provisions of this Regulation should apply inter alia to non-audio-visual 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. ***Owing to the particular nature of such services, they are currently covered by a*** specific exclusion provided for in Article 4, ***which will subsequently be subject to evaluation*** as provided for in Article 9 ***with regard to the specific nature of cultural goods and services***. 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 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.

Amendment 6

Proposal for a regulation

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In its report on the evaluation of this Regulation the Commission should take into account that the principle of territoriality remains an essential element of the copyright system in the Union and that the approach for tackling geo-blocking and fostering online cross-border services should therefore be balanced against the need to protect cultural diversity and the economic model of cultural industries.

Amendment 7

Proposal for a regulation

Recital 7

Text proposed by the Commission

Amendment

(7) 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 Council¹⁸, Regulation (EU) No 1177/2010 of the European Parliament and of the Council¹⁹ and Regulation (EU) No 181/2011 of the European Parliament and of the Council²⁰ already contain broad prohibitions of discriminations covering all discriminatory practices that the present Regulation seeks to address. Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council²¹ will be amended to that effect in 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***

(7) 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. ***Therefore the provisions of this Regulation should also apply to those services.***

Regulation.

¹⁸ **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).**

¹⁹ **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).**

²⁰ **Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).**

²¹ **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).**

Amendment 8

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) 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.

Amendment

(8) 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 **a** specific base for action at Union level as regards taxation matters.

Amendment 9

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) The discriminatory practices that this Regulation seeks to address typically take place through 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, 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 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 conditions 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 general conditions of access for the purposes of this Regulation.

Amendment

(11) The discriminatory practices that this Regulation seeks to address typically take place through 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, 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 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 conditions 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 customer should not be considered general conditions of access for the purposes of this Regulation. ***Terms and conditions should not be considered to be individually negotiated where they have been prescribed by one party and the other party has not been able to influence their content. In the case of an agreement between a trader and a customer, the trader should bear the burden of proving that it has been individually negotiated.***

Justification

To clarify the meaning of an "individually negotiated agreement" to ensure that it cannot encompass "take it or leave it" terms and conditions for use of a website, which might allow geoblocking by the back door. Equally making clear that the trader is required to demonstrate that an agreement is "individually negotiated".

Amendment 10

**Proposal for a regulation
Recital 12**

Text proposed by the Commission

(12) 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, subject to compliance with the rules on competition.

Amendment

(12) Both consumers and undertakings should be safeguarded from ***direct or indirect*** 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, subject to compliance with the rules on competition.

Amendment 11

Proposal for a regulation
Recital 14

Text proposed by the Commission

(14) 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 their nationality, place of residence or place of establishment. 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. However, ***that*** prohibition of discrimination with respect to access to online interfaces should not be

Amendment

(14) 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 their nationality, place of residence or place of establishment. 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. 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 commercial transactions with customers.

understood as creating an obligation for the trader to engage in commercial transactions with customers.

Amendment 12

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) Certain traders operate different versions of their online interfaces, targeting customers from different Member States. While this should remain possible, redirecting a customer from one version of the online interface to another version without his or her explicit consent should be prohibited. All versions of the online interface should remain easily accessible *to* the customer at all times.

Amendment

(15) Certain traders operate different versions of their online interfaces, targeting customers from different Member States. While this should remain possible, redirecting a customer from one version of the online interface to another version without his or her explicit consent should be prohibited. All versions of the online interface should remain easily accessible *for use by* the customer at all times.

Justification

To specify that an interface should not merely remain accessible to the customer, but must also be usable to enable transactions to take place.

Amendment 13

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the customer resides. 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 the Member State of the trader. That may mean that a foreign customer will have to pick up the good in that Member State, or

Amendment

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the customer resides. 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 customers who are residents of the Member State of the trader. That may mean that a foreign customer will have to pick up the good in that Member State, or

in a different Member State to which the trader delivers. In this situation, there is no need to register for value added tax ("VAT") in the Member State of the customer, nor arrange for the cross-border delivery of goods.

in a different Member State to which the trader delivers. In this situation, there is no need to register for value added tax ("VAT") in the Member State of the customer, nor arrange for the cross-border delivery of goods.

Amendment 14

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) The second situation is 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, such as cloud services, data warehousing services, website hosting and the provision of firewalls. 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 on VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/2011²⁶.

²⁶ 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).

Amendment

(19) The second situation is 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, such as cloud services, data warehousing services, website hosting and the provision of firewalls. 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 on *the* VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/2011²⁶.

²⁶ 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).

Amendment 15

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) Finally, *in the situation* where the trader provides services and those services

Amendment

(20) Finally, where the trader provides services and those services are received by

are received by the customer *in* the premises of or at a location chosen by the trader and *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, the application of different general conditions of access for reasons related to such criteria should not be justified either. Those situations *concern, as the case may be*, the provision of services such as hotel accommodation, sport events, car rental, and entry tickets to music festivals or leisure parks. In those situations, the trader does not have to register for VAT in another Member State nor arrange for cross-border delivery of goods.

the customer *on* the premises of or at a location chosen by the trader and *not in* 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, the application of different general conditions of access for reasons related to such criteria should not be justified either. Those situations *may concern* the provision of services such as hotel accommodation, sport events, car rental, and entry tickets to music festivals or leisure parks. In those situations, the trader does not have to register for VAT in another Member State nor arrange for cross-border delivery of goods.

Amendment 16

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) 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) 1215/2012, 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*, compliance with this Regulation does not *imply* any additional costs for the trader 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.

Amendment

(21) 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) 1215/2012, where a trader does not pursue his activities in the Member State of the consumer or does not direct his activities there, compliance with this Regulation does not *entail* any additional costs for the trader associated with jurisdiction or differences in applicable law. *This holds equally where the customer is not a consumer but an undertaking making a purchase as an end user and thus transacting in a manner indistinguishable from that of a consumer.* Where, in contrast, a trader does pursue his activities in the *customer's* Member State or does direct his activities there, the trader has manifested *his or her* intention to establish commercial relations with *customers* from that Member State and *has* thus been able to take account of

any such costs.

Justification

To clarify that undertakings making purchases as end users are behaving like consumers and are covered by the notion of "customer" in the Regulation and that no additional costs arise irrespectively of whether the "customer" is a consumer or an undertaking.

Amendment 17

Proposal for a regulation Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The Regulation should take into account the principle of proportionality, in particular for micro, small and medium enterprises, and the right of market operators to engage in market selection by directing their activities at different Member States or certain groups of customers. The Regulation should therefore ensure the balance between the principle of freedom of trade and the free choice of business strategy and the need to overcome unjustified geo-blocking practices towards customers and undertakings in different Member States.

Amendment 18

Proposal for a regulation Recital 24

Text proposed by the Commission

Amendment

(24) Under Union law, traders are in principle free to decide which means of payment they wish to accept, including payment brands. However, once this choice has been made, in view of the existing legal framework for payment services, there are no reasons for traders to discriminate customers within the Union by refusing certain commercial transactions, or by otherwise applying

(24) Under Union law, traders are in principle free to decide which means of payment they wish to accept, including payment brands. However, once this choice has been made, in view of the existing legal framework for payment services, there are no reasons for traders to discriminate **among** customers within the Union by refusing certain commercial transactions, or by otherwise applying

certain different conditions of payment in respect of those transactions, for reasons related to the nationality, place of residence or place of establishment of the customer. In this 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 be expressly prohibited *as well*. It should be further recalled that Regulation (EU) No 260/2012 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.

different conditions of payment in respect of those transactions, for reasons related to the nationality, place of residence or place of establishment of the customer. In this 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 *also* be expressly prohibited. It should be further recalled that Regulation (EU) No 260/2012 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.

Amendment 19

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) Directive 2015/2366/EU of the European Parliament and of the Council²⁸ introduced strict security requirements for the initiation and processing of electronic payments, which reduced 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 these provisions, *the risk of payment fraud in national and cross-border purchases is brought to an equal level and* should not be used as an

Amendment

(25) Directive 2015/2366/EU of the European Parliament and of the Council²⁸ introduced strict security requirements for the initiation and processing of electronic payments, which reduced 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 these provisions, *cross-border purchases do not entail a higher risk of payment fraud than national purchases, meaning that the risk of*

argument to refuse or discriminate any commercial transactions within the Union.

payment fraud should not be used as an argument to refuse or discriminate *against* any commercial transactions within the Union.

²⁸ 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. 35–127).

²⁸ 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. 35–127).

Amendment 20

Proposal for a regulation Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) Data and metadata generated by e-commerce and online transactions should comply with the legislative framework on traffic and location of data, data retention, data protection and data analysis, ensuring full compliance with Union law. Beyond that minimum requirement, companies engaging in e-commerce should be encouraged to develop innovative business models that make use of the least possible data, collect the minimum data necessary for their legitimate purpose, and store them for the shortest possible period of time.

Amendment 21

Proposal for a regulation Recital 26

Text proposed by the Commission

Amendment

(26) This Regulation should not affect the application of the rules on competition,

(26) 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 330/2010²⁹ 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 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 in respect of passive sales requiring the trader to act in violation of this Regulation 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 Regulation (EU) No 330/2010.

²⁹ 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).

Amendment 22

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate, in particular, on the possible extension of the

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 330/2010²⁹ to certain customers or to 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. Even when **such agreements** are not **covered** by Article 101 TFEU, in the context 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 in respect of passive sales requiring the trader to act in violation of this Regulation 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 Regulation (EU) No 330/2010.

²⁹ 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).

Amendment

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate, in particular, on the possible extension of the

prohibition of Article 4(1)(b) 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, provided that the trader has the requisite rights for the relevant territories.

prohibition of Article 4(1)(b) to electronically supplied services, the main feature of which is the provision of access to and use *or sale* of copyright protected works or other protected subject matter, provided that the trader has the requisite rights for the relevant territories. ***The first evaluation should take into account the legal developments in Member States with regard to the copyright reform, audiovisual media services and cross-border portability of online content services.***

Amendment 23

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) In order to achieve the objective of effectively addressing direct and indirect 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 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.

Amendment

(33) In order to achieve the objective of effectively ***preventing*** direct and indirect discrimination based on the nationality, place of residence or place of establishment of customers, ***and of providing effective means of redress to those customers who consider themselves affected by it***, it is appropriate to adopt a Regulation, which applies ***directly*** 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.

Amendment 24

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

(a) where the trader sells goods, provides services, or seeks to do so, in a Member State other than the Member State in which the customer has *the* place of residence or *the* place of establishment;

Amendment

(a) where the trader sells goods, provides services, or seeks to do so, in a Member State other than the Member State in which the customer has *his or her* place of residence or place of establishment;

Amendment 25

Proposal for a regulation

Article 1 – paragraph 2 – point b

Text proposed by the Commission

(b) where the trader sells goods, provides services, or seeks to do so, in the same Member State as the one in which the customer has *the* place of residence or place of establishment, but the customer is a national of another Member State;

Amendment

(b) where the trader sells goods, provides services, or seeks to do so, 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;

Amendment 26

Proposal for a regulation

Article 1 – paragraph 2 – point c

Text proposed by the Commission

(c) where the trader sells goods or provides services, or seeks to do so, in a Member State in which the customer is temporarily located without residing in that Member State or having *the* place of establishment in that Member State.

Amendment

(c) where the trader sells goods or provides services, or seeks to do so, in a Member State in which the customer is temporarily located without residing in that Member State or having *his or her* place of establishment in that Member State.

Amendment 27

Proposal for a regulation

Article 1 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. This Regulation shall be without prejudice to the rules applicable in the

Amendment 28

Proposal for a regulation

Article 1 – paragraph 5

Text proposed by the Commission

5. 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 or her activities to the Member State where the consumer has **the** 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) 1215/2012.

Amendment

5. 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 or her activities to the Member State where the consumer has **his or her** 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.

Amendment 29

Proposal for a regulation

Article 2 – paragraph 2 – point e

Text proposed by the Commission

(e) 'goods' means any tangible movable item, with the exception of items sold by way of execution or otherwise by authority of law; **water, gas and electricity shall be considered as goods within the meaning of this Regulation where they are put up for sale in a limited volume or a set quantity;**

Amendment

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

Justification

The specific case included here, while taken from the definition of "goods" in the Consumer Rights Directive (2011/83/EC), does not appear relevant in the case of a Regulation on unjustified geoblocking.

Amendment 30

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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.

Amendment

In the event of such redirection with the customer's explicit consent, the original version of the online interface shall remain easily accessible for **use by** that customer.

Justification

To specify that an interface should not merely remain accessible to the customer, but must also be usable to enable transactions to take place.

Amendment 31

Proposal for a regulation

Article 3 – paragraph 4

Text proposed by the Commission

4. 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 paragraph 4, the trader shall provide a clear justification. That justification shall be given in the language of the online interface that the customer originally sought to access.

Amendment

4. 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 paragraph 3, the trader shall provide a clear justification. That justification shall be given in the language of the online interface that the customer originally sought to access.

Amendment 32

Proposal for a regulation

Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) 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;

Amendment

(b) where the trader provides electronically supplied services, other than services the main feature of which is the provision of access to and use **or sale** of copyright protected works or other protected subject matter;

Amendment 33

Proposal for a regulation

Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) where the trader provides services, other than those covered by point (b), and those services are supplied to the customer **in** the premises of the trader or in a physical location where the trader operates, in a Member State other than that of which the customer is a national or in which the customer has **the** place of residence or **the** place of establishment.

Amendment

(c) where the trader provides services other than those covered by point (b), and those services are supplied to the customer **on** the premises of the trader or in a physical location where the trader operates, in a Member State other than that of which the customer is a national or in which the customer has **his or her** place of residence or place of establishment.

Amendment 34

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

2. The prohibition set out in paragraph 1 shall not preclude traders' **possibility to request charges** for the use of a card-based payment instrument for which interchanges 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. Those charges shall not exceed the costs borne by the trader for the use of the payment instrument.

Amendment

2. The prohibition set out in paragraph 1 shall not preclude traders **from charging** for the use of a card-based payment instrument for which interchanges 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. Those charges shall not exceed the costs borne by the trader for the use of the payment instrument.

Amendment 35

Proposal for a regulation

Article 7 – paragraph 1

Text proposed by the Commission

1. Each Member State shall designate a body or bodies responsible for the

Amendment

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 this Regulation.

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 this Regulation, ***including through cross-border cooperation mechanisms.***

Justification

While retaining the spirit of the Commission proposal and allowing Member States to determine which body/bodies to designate and how to ensure compliance, this amendment underscores that any arrangement must encompass cross-border cooperation mechanisms to guarantee effectiveness.

Amendment 36

Proposal for a regulation Article 8 – title

Text proposed by the Commission

Amendment

Assistance to ***consumers***

Assistance to ***customers***

Justification

Since the Regulation applies not only to "consumers", but to undertakings transacting as end users ("customers"), the assistance and dispute resolution mechanisms should include all "customers" within the meaning of this Regulation.

Amendment 37

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

Amendment

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 assist those bodies in developing this model form.

2. The bodies referred to in paragraph 1 shall offer ***customers*** a uniform model form to file complaints to the bodies referred to in paragraph 1 and in Article 7(1). The Commission shall assist those bodies in developing this model form.

Justification

Since the Regulation applies not only to "consumers", but to undertakings transacting as end

users ("customers"), the assistance and dispute resolution mechanisms should include all "customers" within the meaning of this Regulation.

Amendment 38

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing whether the prohibition of Article 4(1)(b) 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, provided that the trader has the requisite rights for the relevant territories.

Amendment

2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing whether the prohibition of Article 4(1)(b) 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, provided that the trader has the requisite rights for the relevant territories. ***The evaluation shall take due account of the specificities of copyright-protected cultural goods and services.***

Justification

The review clause is specifically designed to consider extending the Regulation's scope to include "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". This amendment stresses that the specific nature of cultural goods and services must be fully considered in the evaluation.

PROCEDURE – COMMITTEE ASKED FOR OPINION

| | |
|---|---|
| Title | Addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market |
| References | COM(2016)0289 – C8-0192/2016 – 2016/0152(COD) |
| Committee responsible Date announced in plenary | IMCO 9.6.2016 |
| Opinion by Date announced in plenary | CULT 9.6.2016 |
| Rapporteur Date appointed | Therese Comodini Cachia 7.7.2016 |
| Date adopted | 24.1.2017 |
| Result of final vote | +: 21 -: 1 0: 5 |
| Members present for the final vote | Dominique Bilde, Andrea Bocskor, Silvia Costa, Mircea Diaconu, Angel Dzhambazki, Jill Evans, María Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerevert, Andrew Lewer, Svetoslav Hristov Malinov, Curzio Maltese, Luigi Morgano, Momchil Nekov, John Procter, Michaela Šojdrová, Yana Toom, Helga Trüpel, Sabine Verheyen, Julie Ward, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver, Krystyna Łybacka |
| Substitutes present for the final vote | Therese Comodini Cachia, Sylvie Guillaume |

PROCEDURE – COMMITTEE RESPONSIBLE

| | | | |
|---|---|------------------|------------------|
| Title | Addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market | | |
| References | COM(2016)0289 – C8-0192/2016 – 2016/0152(COD) | | |
| Date submitted to Parliament | 25.5.2016 | | |
| Committee responsible Date announced in plenary | IMCO 9.6.2016 | | |
| Committees asked for opinions Date announced in plenary | ITRE 9.6.2016 | CULT 9.6.2016 | JURI 9.6.2016 |
| Associated committees Date announced in plenary | JURI 19.1.2017 | | |
| Rapporteurs Date appointed | Róza Gräfin von Thun und Hohenstein 17.6.2016 | | |
| Discussed in committee | 29.9.2016 | 6.3.2017 | 21.3.2017 |
| Date adopted | 25.4.2017 | | |
| Result of final vote | +: 30 –: 3 0: 4 | | |
| Members present for the final vote | Dita Charanzová, Carlos Coelho, Sergio Gaetano Cofferati, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Dennis de Jong, Pascal Durand, Evelyne Gebhardt, Maria Grapini, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Morten Løkkegaard, Eva Maydell, Marlene Mizzi, Marcus Pretzell, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Jasenko Selimovic, Ivan Štefanec, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Anneleen Van Bossuyt, Marco Zullo | | |
| Substitutes present for the final vote | Pascal Arimont, Lidia Joanna Geringer de Oedenberg, Roberta Metsola, Franz Obermayr, Julia Reda, Ulrike Trebesius, Sabine Verheyen | | |
| Substitutes under Rule 200(2) present for the final vote | David Coburn, Pál Csáky, Andor Deli, Dieter-Lebrecht Koch | | |
| Date tabled | 27.4.2017 | | |

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

| 30 | + |
|-----------|--|
| ALDE | Dita Charanzová, Morten Løkkegaard, Jasenko Selimovic |
| EFDD | Robert Jarosław Iwaszkiewicz, Marco Zullo |
| PPE | Pascal Arimont, Carlos Coelho, Anna Maria Corazza Bildt, Pál Csáky, Andor Deli, Dieter-Lebrecht Koch, Eva Maydell, Roberta Metsola, Andreas Schwab, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Sabine Verheyen |
| S&D | Sergio Gaetano Cofferati, Nicola Danti, Evelyne Gebhardt, Lidia Joanna Geringer de Oedenberg, Maria Grapini, Liisa Jaakonsaari, Marlene Mizzi, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler |
| Verts/ALE | Pascal Durand, Julia Reda |

| 3 | - |
|------|---------------------------------|
| EFDD | David Coburn |
| ENF | Franz Obermayr, Marcus Pretzell |

| 4 | 0 |
|---------|---|
| ECR | Daniel Dalton, Ulrike Trebesius, Anneleen Van Bossuyt |
| GUE/NGL | Dennis de Jong |

Key to symbols:

+ : in favour

- : against

0 : abstention