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NOTE

From: Presidency
To: Delegations

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Subject: 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
- Presidency compromise

Please find in Annex a Presidency compromise on Recitals 21a and 24 as well as Articles 1 to 11 of
the Proposal based on the discussions in the WP as well as written comments by Members States.

New text is **bold underlined** and deletions in ~~strikethrough~~.

(21a) The prohibition to discriminate customers applicable in the situations above 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, provided that a foreign customer seeking to conclude a contract according to one given set of terms and conditions is subject to the same contractual rights and obligations applicable to national transactions. This however also entails the application of any territorial limitation on the provision of after sale services deriving from the applicable terms and conditions the customer agreed to, in accordance with Union law and the applicable national law in accordance with Union law. This includes the fact that the trader has to bear the postage cost of any defective good in accordance with Directive 1999/44/EC, for the purposes of its repair or replacement under the legal guarantee, to and from the Member State of the contractually agreed delivery point of the good, where it is picked up by the customer. Similarly, where the trader bears the costs of returning a good following the exercise of the right of withdrawal pursuant to Directive 2011/83/EU, these are linked to the transport costs from the Member State of the contractually agreed delivery point of the good. This Regulation therefore does neither provide for an obligation to deliver goods cross-border nor for an obligation to accept to take back these in the country of establishment or of residence of the customer.

(24) Under Union law, traders are in principle free to decide which means of payment they wish to accept, including payment brands. **In accordance with the rules of Regulation (EU) 2015/751 and Directive 2007/64/EC , retailers accepting a card-based payment instrument of a specific brand and category are not under an obligation to accept card-based payment instruments of the same category but of a different brand. Likewise retailers accepting a debit card of a given brand are under no obligation to accept credit card of that brand, or when accepting consumer credit cards of a given brand also to accept commercial credit cards of the same brand.** 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. The trader should remain free to request charges for the use of a payment instrument. **However, this right is subject to the restrictions introduced by Article 62 of the Directive (EU) 2015/2366.**

Article 1

Objective and scope

1. **The purpose of this Regulation seeks *is* 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 under Article 20(2) of Directive 2006/123/EC is under no circumstances justifiable.***
2. This Regulation ~~applies~~ **does not apply** to the following **purely internal** situations: **where there is no cross-border element in the commercial relations between a trader and a customer.**
 - ~~(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.~~

Article 2

Definitions

For the purposes of this Regulation, the definitions **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', set out in** Article 2(10), (20) and (30), **(33), (34) and (35)** of Regulation (EU) 2015/751 of the European Parliament and Council and **the definitions of the terms 'payment transaction', 'payer', 'payment service provider', 'payment account', 'payment instrument', 'direct debit', 'credit transfer' and 'strong customer authentication' set out in** Article 4(5), (8), (11), (12), (14), (23), (24) and (30) of Directive (EU) 2015/2366 shall apply.

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

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

- (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 **only for end use**, ~~other than for resale~~;
- (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;
- (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~~;
- (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;
- (g) 'service' means any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 of the Treaty;
- (h) 'trader' means any natural or legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his or her name or on his or her behalf, for purposes relating to his or her trade, business, craft or profession.

Article 3

Access to online interfaces

1. Traders shall not, through the use of technological measures or otherwise, block or limit customers' access to their online interface for reasons 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 **to** which the customer ~~originally~~ **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 **of** establishment, unless the customer ~~gives~~ **has given** 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 **to which the customer first sought access**, shall remain easily accessible for that customer.

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 is necessary ~~with respect to certain customers or to customers in certain territories~~ 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 ~~3~~, the trader shall provide a clear justification **to customers**. That justification shall be given in the language of the online interface that the customer ~~originally~~ **first** sought ~~to~~ access.

Article 4

Access to goods or services

1. Traders shall not apply different general conditions of access to their goods or services, for reasons related to the nationality, place of residence or place of establishment of the customer, in the following situations **where the customer seeks to:**
 - (a) ~~where the trader sells~~ **buy** goods **from a trader** and **accepts that** 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~~ **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;
 - (c) ~~where the trader provides~~ **receive** services, other than those covered by point (b) **from a trader within a Member State** 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~~ **and where that** customer is a national **of,** or in which ~~the customer has the~~ **a** place of residence or ~~the place of establishment~~ **in, another Member State.**

- 1a. The prohibition set out in paragraph 1 shall not prevent traders from offering general conditions of access[, including sale prices,] which differ between Member States or within a Member State and which target customers on a specific territory.**
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 2006/112/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.

Article 5

Non-discrimination for reasons related to payment

1. **Within the range of [electronic] payment means, namely credit transfers, direct debits or a card-based payment instrument of a specific brand and category,** ~~Traders~~ **have decided to accept, they** 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~~ **for** payment ~~for any sales of goods or provision of services, where~~ **transactions where:**
- ~~(a) those payments are made through electronic transactions by credit transfer, direct debit or a card-based payment instrument within the same payment brand;~~

- (b) the payee can request **identity of the payer or the validity of the use of the payment means can be verified by** strong customer authentication by the payer pursuant to the Directive (EU) 2015/2366; and
- (c) the payments **transactions** are in a currency that the payee **trader** 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, **unless national prohibitions or limitations of the right to request charges for the use of payment instruments have been introduced in the laws of the Member States according 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.

Article 6

Agreements ~~on passive sales~~ **between traders and suppliers**

Agreements **or parts thereof, between trader and their suppliers,** imposing on traders obligations, ~~in respect of passive sales,~~ to act in violation of this Regulation shall be ~~automatically~~ **deemed null and** void.

Enforcement by Member State authorities **and cross-border cooperation**

1. Each Member State shall designate a body or bodies responsible for **ensure adequate and effective** 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.~~

1a. Without prejudice to other information and cooperation mechanisms, each Member State shall designate a body or bodies responsible for ensuring cross-border cooperation. These bodies shall in particular:

- (a) provide information to consumers;**
- (b) exchange information with bodies in other Member States through appropriate electronic means;**
- (c) accept complaints from customers and forward complaints to bodies in other Member States; and**
- (d) facilitate communication between the customer and the trader in order to facilitate the resolution of the dispute.**

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

2a. Where no other information and cooperation mechanisms exist, the Internal Market Information System ('IMI') established by Regulation (EU) No 1024/2012 shall be used for the purpose of paragraph 1a (b). The bodies responsible for cross-border cooperation pursuant to paragraph 1a shall use a module of IMI specifically customised for needs of this Regulation.

Article 8

Assistance to consumers

- ~~1. Each Member State shall confer responsibility for providing practical assistance to consumers to a body or bodies in case of a dispute between a consumer and a trader arising from the application of this Regulation. Each Member State shall designate a body or bodies responsible for that task.~~
- ~~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.~~

Article 9

Review clause

1. By *[date: ~~two~~ **[XX]** years after the entry into force of this Regulation]* and every ~~five~~ **[XX]** 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.

Article 10

Amendments to Regulation (EC) No 2006/2004, and Directive 2009/22/EC **and Regulation (EU) No 1024/2012**

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."
2. In Annex I to Directive 2009/22/EC the following point *[number]* is added: "*[number]* *[full title of this Regulation]* (OJ L XX, XX.XX.Year, p. X)."
3. **In the Annex to Regulation (EU) No 1024/2012, the following point is added: "9. Regulation... (EU) 2016/...* on addressing unjustified geo-blocking and other form of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004, Directive 2009/22/EC and Regulation (EU) No 1024/2012: Article 7.**

Article 11

Final provisions

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

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

However, point (b) of Article 4(1) shall apply from ~~1 July 2018~~ **[XX]**.
