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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 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 with respect to the Commission proposal.

Recital on internal situations

(5a) [...]

Recital 10 linked to Article 1(5)

- (10) This Regulation should ~~not affect~~ **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 Council¹ and (EU) 1215/2012 of the European Parliament and of the Council², 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 this reason, and in order to ensure legal certainty for those traders who, simply comply with this Regulation, it should be made clear, that the mere fact that the trader makes the 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 be considered, on its own, as directing the traders activities into the Member State of the consumer, for the purpose of the determination of the applicable law and jurisdiction, unless the existence of additional elements, allowing to conclude such intention to direct activities to such Member States in accordance with Union law, is proved.**

¹ 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).

² 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).

Recital on resale/transformation/processing

- (12) **When purchasing goods or services as end-users under general conditions of access, consumers and undertakings, in particular microenterprises, small and medium enterprises, are often in a similar position. Hence, B**both consumers and undertakings should be ~~safeguarded~~ **protected** ~~from~~ **against** discrimination for reasons related to their nationality, place of residence or place of establishment when acting as customers for the purposes of this Regulation. However, that protection should not extend to customers purchasing a good or a service for **subsequent** resale, **transformation, processing or renting** because it would affect widely used distribution schemes between undertakings in a business to business context, **often negotiated bilaterally and directly linked to the commercial strategies at downstream and upstream level**, such as selective and exclusive distribution, which generally allow for manufacturers to select their retailers, subject to compliance with the rules on competition.
- (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.**

- (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 282/2011³
- (20) Finally, in the situation where the trader provides services and those services are received by the customer ~~in the premises of or a location of 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~~ **within the territory of a Member State where the trader operates, the application of different general conditions of access for reasons related to the nationality or the place of residence or place of establishment of the customer, should not be justified either**; Those situations concern, as ~~the case may be,~~ the provision of services, **different from electronically supplied services, including services provided at a specific physical location where the trader operates,** 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.

³ ~~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).~~

(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 customer of another Member State seeking to conclude a contract can do so according to one given set of terms and conditions as those applicable to transactions in purely internal situation. Traders should also have the freedom to offer different conditions, including different prices, in different points of sale, i.e. shops or websites. This also includes the application of any territorial and other limitation on after sale customer assistance, after-sales services and commercial guarantees offered by the trader to the consumer pursuant to Directive 2011/83/EU. Where pursuant to Directive 1999/44/EC the trader should provide for a free of charge repair or replacement of a defective good which has been sold to a consumer by virtue of Article 4 of this Regulation, the trader should bear the cost of postage and transport to and from the contractually agreed place of delivery where the consumer picked up the good. Similarly, where the trader bears the cost of returning such a good following the exercise of the consumer's right of withdrawal pursuant to Directive 2011/83/EU, the relevant cost is the cost of sending the good from the contractually agreed place of delivery where the consumer picked up the good. This Regulation therefore neither provides for an obligation to deliver goods cross-border to Member State, where the trader does not offer delivery in his general conditions of access, nor for an obligation to accept to take back these in the Member State of residence or establishment of the customer.

- (22) Traders falling under the special scheme provided in Chapter 1 of Title XII of Council Directive 2006/112/EC are not required to pay VAT **in the Member State where they are established**. For those traders, when providing electronically supplied services, the prohibition of applying different general conditions of access for reasons related to 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.
- (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 (EU) 2015/2366, 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.**

(25) Directive 2015/2366/EU of the European Parliament and of the Council⁴ 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 argument to refuse or discriminate any commercial transactions within the Union.

[...]

⁴ 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).

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 situations where different treatment cannot be justified by objective criteria, in accordance with Article 20(2) of Directive 2006/123/EC.**
2. This Regulation ~~applies~~ **does not apply** to the following **purely internal** situations: **without any cross-border element.**
 - ~~(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.

Option 1:

This Regulation shall ~~not affect acts of~~ **be without prejudice to** Union law concerning judicial cooperation in civil matters. Compliance with this Regulation shall not be construed as implying that a trader directs 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 Articles 3, 4 and 5 ensures access to his or her 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.**

Option 2:

Notwithstanding paragraph 2 of article 6 of Regulation (EC) No 593/2008 and articles 17 to 19 of Regulation (EU) 1215/2012 the trader and the consumer may agree to subject situations covered by this Regulation to the applicable law set out by the trader`s general conditions of access and they may agree to bring proceedings against the other party only in the court of the Member State where the trader is established. For the purpose of reaching that agreement the trader shall inform the consumer in a clear and comprehensible way about the consequences of such agreement and the consumer shall give his or her explicit consent to such agreement.

6. ~~Insofar as the provisions of this Regulation conflict with the provisions of Article 20(2) of Directive 2006/123/EC~~ **Article 20(2) of Directive 2006/123/EC shall continue to apply unless this Regulation sets specific obligations for traders. In the latter case, 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, ~~other than for resale~~ **only for end use**;

- (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 **or part of 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 **or** limitation of **customers`** access **to the trader`s online interface** 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, **to which the trader`s activities is subject to**.
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~~ **explanation to customers**. That ~~justification~~ **explanation** 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 those goods are ~~not delivered cross-border to the~~ **to a location in a** Member State to which the trader **offers delivery in his general conditions of access** or, ~~on his or her behalf~~ **are collected at a location agreed upon between the trader and the customer in a Member State in which the trader offers such option in his general conditions of access;**
 - (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 **electronically supplied services** ~~those covered by point (b)~~ **from a trader [in a physical location] within the territory of 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 customer is a national or in which the customer has the place of residence or the place of establishment.
- 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 are directed to 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 payment means, namely credit transfers, direct debits or a card-based payment instrument of a specific brand and category,** ~~Traders~~ **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 instrument is verifiable 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.

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.

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 the prohibition or limitation of the right to request charges for the use of payment instruments according to Article 62(5) of Directive (EU) 2015/2366 has been introduced in the law of the Member State which the trader's operation is subject to.**

Those charges shall not exceed the **direct** costs borne by the trader for the use of the payment instrument.

[Article 6

Agreements on passive sales

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

Article 7

~~Enforcement by Member State authorities~~

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

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.

Article 8

Assistance to consumers

- ~~1.~~ Each Member State shall ~~confer responsibility~~ **designate a body or bodies responsible** 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

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)."

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]**.