



Council of the
European Union

Brussels, 27 November 2017
(OR. en)

14780/17

Interinstitutional File:
2016/0152 (COD)

LIMITE

MI 866
TELECOM 312
DIGIT 256
CONSOM 369
IND 330
COMPET 804
ENT 247
POSTES 23
JUSTCIV 276
PI 134
CODEC 1895

NOTE

From: Presidency
To: Permanent Representatives Committee

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

- Analysis of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 25 May 2016, the Commission submitted a proposal accompanied by an impact assessment, for a Regulation of the European Parliament and of the Council 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 (2016/0152(COD))¹.

¹ See doc. 9611/16 + ADD 1 + ADD 2

2. The draft Regulation, which is based on article 114 of the Treaty, was presented together with legislative proposals on cross-border parcel delivery services² and a revision of the Consumer Protection Cooperation Regulation³ with the objective to deliver on both the Digital Single Market and Single Market strategies.
3. On 10 June 2016, the Council decided to consult the Economic and Social Committee, which adopted its opinion on 19 October 2016⁴.
4. The Working Party on Competitiveness and Growth (Internal Market) examined this proposal under the Dutch, Slovak, Maltese and Estonian Presidencies. On 28 November 2016, the Council adopted a general approach⁵ at the Competitiveness Council meeting.
5. In the European Parliament (EP), this proposal was referred to the Internal Market and Consumer Protection (IMCO) Committee which appointed Ms. Róza Gräfin von Thun und Hohenstein (EPP/PL) as rapporteur. The IMCO Committee voted on its report in April 2017.
6. Four trilogues were conducted on 18 May, 13 June, 27 June and 20 November. At the trilogue of 20 November 2017, the co-legislators reached a provisional agreement.

II. STATE OF PLAY

7. COREPER was informed on 22 November 2017 of the provisional agreement reached at the 20 November 2017 trilogue, which is generally in line with the negotiation mandate given to the Presidency by COREPER on 16 November 2017⁶. Delegations showed willingness to support the agreement. The provisional agreement was also supported by the Commission.

² See 9706/16.

³ See doc. 9565/16.

⁴ Opinion of the European Economic and Social Committee (rapporteur Mr Joost van Iersel (NL/Group I)) - INT/797 of 19/10/2016.

⁵ See doc. 14662/16 and 14663/16.

⁶ See doc. 14086/17 and 14087/17

III. CONCLUSION

8. The Permanent Representatives Committee is invited to endorse the compromise text and to provide the Presidency with the mandate to inform the European Parliament that, should the Parliament adopt the text of the Proposal in the exact form as set out in the Annex - subject to legal-linguistic revision - at a forthcoming plenary meeting, the Council would adopt the proposed Regulation thus amended.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order to realise the full potential of the internal market as an area without internal frontiers in which the free movement of inter alia goods and services is ensured, it is not sufficient to abolish, 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 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 some traders' practices deny or limit access to goods or services by customers wishing to engage in cross-border commercial transactions, or apply in this regard different conditions which are not objectively justified.

- (2) There are different underlying reasons for companies, in particular SMEs and micro-enterprises, to apply different conditions. 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 customers from other Member States. In other cases 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. Hence, removing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place or residence or place of establishment could foster growth and increase consumer choice throughout the internal market.
- (2a) This Regulation aims to address unjustified 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 leading 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.

- (3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council, 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 further clarify Article 20 of Directive 2006/123/EC by defining certain situations where different treatment on the basis of nationality, place of residence or place of establishment cannot be justified under it. However, insofar as the provisions of this Regulation conflict with the provisions of Directive 2006/123/EC, the provisions of this Regulation should prevail. Moreover, unjustified geo-blocking and other forms of discrimination based on nationality, place of residence or place of establishment can also arise as a consequence of actions by traders established in third countries, which fall outside the scope of that Directive.
- (4) For the purposes of ensuring the good functioning of the internal market and fostering access to and free movement of goods and services across the Union without discrimination on the basis of nationality, place of establishment 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 aim to widen customer choice, and access to goods and services, whilst taking due account of traders' freedom in organising their commercial policy in accordance with Union and national law.

- (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 a trader and a customer relating to the sales of goods and the provision of services within the Union. It seeks to address direct as well as indirect discrimination, thus 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, regardless of whether the customer concerned is present, permanently or on a temporary basis, in another Member State or place of establishment. Such other criteria can be applied, in particular, on the basis of information indicating the physical location of customers, such as the IP address used when accessing an online interface, the address submitted for the delivery of goods, the choice language made or the Member State where the customer's payment instrument has been issued.
- (5a) The rights and obligations provided for in this Regulation should not apply to situations which are purely internal to a Member State, i.e. where all the relevant elements of the transaction are confined to a single Member State, in particular the nationality, the place of residence or the place of establishment of the customer or the trader, place of execution, payment means used in the transaction or the offer as well as the use of an online interface.

- (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 principle purpose of which is the provision of access to broadcasts of sports events and which are provided on the basis of exclusive territorial licenses, are excluded from the scope of this Regulation. Access to retail financial services, including payment services, should therefore also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments.
- (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 Council, Regulation (EU) No 1177/2010 of the European Parliament and of the Council and Regulation (EU) No 181/2011 of the European Parliament and of the Council 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 Council 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.

- (7a) Where a trader offers a bundle of several services combined together or a bundle of goods combined with services and one or more of those services would, if offered on an individual basis, fall within the scope of the obligations laid down in this Regulation while another service or services would not, that trader should either comply with the prohibitions set in this Regulation as regards the whole bundle, or at least offer on an individual basis services that fall within the scope of this Regulation, if those services are offered to customers by the same trader on an individual basis. Where a trader provides a service and/or good on an individual basis outside a bundle, he or she should remain free to decide the price he or she applies to such a service/good outside a bundle in so far as he or she does not apply different pricing for reasons related to nationality or place of residence or place of establishment.
- (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.
- (9) Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council, 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 Council, 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.

- (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 court jurisdiction set out in Regulations (EC) No 593/2008 of the European Parliament and of the Council and (EU) 1215/2012 of the European Parliament and of the Council. In particular, the mere fact that a trader complies with the provisions of this Regulation should not be construed as implying that a trader directs his or her 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. Therefore, the mere fact that the trader does not block or limit access to his or her online interface for customers 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 within the range of payment means he accepts, 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. Nor should the trader, on those grounds alone, be considered as directing his or her activities to the Member State where the consumer has his or her habitual residence or domicile, where the trader provides information and assistance to the consumer subsequent to the conclusion of the contract resulting from the trader's compliance with this Regulation.

- (10a) As regards the meaning and application of the concept of ‘electronically supplied services’ as defined in this Regulation, it is important to provide legal certainty and ensure consistency with Union law relating to the value-added tax (VAT), which allow the trader to declare and pay VAT in a simplified manner via VAT Mini-One-Stop-Shop (MOSS) in accordance with the rules on Special Scheme for non-established taxable persons set out in Council Directive 2006/112/EC and Council Implementing Regulation (EU) No 282/2011/EC. Due to the rapid technological and commercial developments, the concept of electronically supplied services should be defined in a technology-neutral manner, with reference to the main characteristics of such services, in a way that is consistent with the definition provided for in Article 7(1) of Implementing Regulation (EU) No 282/2011/EC. Accordingly, when interpreting and applying that definition, due account should be taken of the further specifications included in Annex II to Directive 2006/112/EC and in Article 7(2) and (3) of Implementing Regulation 2011/282 and Annex I thereto, in as far as the services listed in those provisions fall within the scope of this Regulation.
- (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.

- (12) When purchasing goods or services as end-users under general conditions of access, consumers and undertakings, in particular microenterprises, small and medium-sized enterprises, are often in a similar position. Hence, both consumers and undertakings should be protected against discrimination for reasons related to their nationality, place of residence or place of establishment when acting as customers for the purposes of this Regulation. However, that protection should not extend to customers purchasing a good or a service for subsequent resale, transformation, processing, renting or subcontracting because 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. Hence, this Regulation should be without prejudice to non-discriminatory practices of traders limiting transactions or repetitive transactions to prevent undertakings from purchasing quantities exceeding their internal needs, taking due account of their size, with a view to identifying whether the purchase is for end use only.
- (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, including online marketplaces, operating within the Union.

- (14) In order to increase the possibility for customers to access information related to the sales of goods and the provision of services within the internal market and to increase transparency, including with respect to prices, traders should not, through the use of technological measures or otherwise, prevent customers from having full and equal access to online interfaces, including in the form of mobile applications, on the basis of their nationality, place of residence or place of establishment. Technological measures to prevent such access can encompass, in particular, any technologies used to determine the physical location of the customer, including the tracking of that location by means of IP address or, coordinates obtained through a global navigation satellite system. 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.
- (14a) In order to ensure the equal treatment of customers and to avoid discrimination, in accordance with this Regulation, traders should not design their online interface or apply technological means in a way that would not allow customers from other Member States to easily complete their orders in practice.
- (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. 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 customer explicit consent has been given, including by expressing his or her preference on a personal account, it should be deemed to be valid for all subsequent visits of the same consumer to the same online interface. Such consent may be withdrawn at any point in time by the customer. All versions of the online interface should remain easily accessible to the customer at all times.

- (16) In certain cases, blocking or 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 of residence or place of establishment might be necessary in order to ensure compliance with a specific legal requirement in Union law or in the laws of a Member State in accordance with Union law to which the trader is subject to as a consequence of operating in that Member State. Such laws can limit customers' access to certain goods or services, for instance by prohibiting the display of specific content in certain Member States. Traders should not be prevented from complying with such requirements and should thus be able to block, limit access or redirect certain customers or customers in certain territories to an online interface, insofar as this may be necessary for that reason. Nothing in this Regulation is intended to restrict the freedom of expression and the freedom and pluralism of the media, including freedom of press, as they are guaranteed in the Union and in the Member States, in particular under Article 11 of the Charter of Fundamental Rights of the European Union.
- (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 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 place of establishment. Where necessary, a trader 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.

- (18) The first of those situations is where the trader sells goods and the goods are delivered to a Member State to which the trader offers delivery in his general conditions of access, or are collected at a location agreed upon between the trader and the customer in a Member State in which the trader offers such option in his general conditions of access. In that situation the customer should be able to purchase goods, under exactly the same conditions, including price and conditions relating to the delivery of the goods, as similar customers who are residents of the Member State in which the goods are delivered or in which the goods are collected. That may mean that foreign customers 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, there is no need to register for value added tax ("VAT") in the Member State of the customer.
- (19) The second situation is where the trader provides electronically supplied services. In this case, no physical delivery is required, as the services are being supplied electronically. The trader can declare and pay VAT in a simplified manner in accordance with the rules on VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/2011. Electronically supplied services include for example cloud services, data warehousing services, website hosting and the provision of firewalls, use of search engines and Internet directories.

- (20) Finally, in the situation where the trader provides services and those services are received by the customer in a physical location, such as the premises of the trader or at another specific location where the trader offers the provision of his or her services within the territory where the trader operates, the application of different general conditions of access for reasons related to the nationality, place of residence or place of establishment of the customer should not be justified either. Those situations concern, the provision of services other than electronically supplied services, such as hotel accommodation, sports events, car rental, and 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.
- (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 entail 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.

- (21a) The prohibition to discriminate customers applicable in the above situations pursuant to this Regulation should not be understood as precluding traders from offering goods or services in different Member States or to certain groups customers with targeted offers and differing terms and conditions, including through the setting-up of country-specific online interfaces, as long as traders treat their customers in a non-discriminatory manner, regardless of their nationality, place of residence or place of establishment, where a customer wishes to benefit from such offers and terms and conditions. That prohibition should not be understood as precluding the application of terms and conditions differing on other grounds, such as membership of a certain association or contributions made to the trader, where such grounds are unrelated to nationality, place of residence or place of establishment. Neither should that prohibition be understood as precluding the freedom of traders to offer, on a non-discriminatory basis, different conditions, including different prices, in different points of sale, such as shops and websites or make available specific offers only to a specific territory in a Member State.
- (21a) Mere compliance with this Regulation should not in itself entail an obligation for a trader to comply with non-contractual national legal requirements relating to the respective goods and services of the Member State of the customer, such as labelling or sector-specific requirements, or to inform customers about these requirements.
- (21b) Furthermore, that prohibition should not be understood as affecting the application of any territorial or other limitation on after sale customer assistance or after-sales services offered by the trader to the customer. This Regulation should therefore not be understood as providing for an obligation to deliver goods cross-border to another Member State where the trader would not otherwise offer the possibility of such delivery to its customers. Nor should it be understood as providing for an additional obligation to bear any costs of postage and transport and assembly and disassembly costs beyond what has been contractually agreed in accordance with Union and national law. The application of this Regulation should be without prejudice to Directives 1999/44/EC and 2011/83/EU.

- (22) Traders falling under the special scheme provided for 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.
- (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.

(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 and Directive (EU) 2015/2366 of the European Parliament and of the Council, 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, or of the same brand but a different category. 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. Equally, a trader using payment initiation services as defined in Directive (EU) 2015/2366 is under no obligation to accept the payment, if this requires entering into a new or modified contract with a payment initiation service provider. However, once this choice has been made, traders should not discriminate 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 likewise be expressly prohibited. It should be further recalled that Regulation (EU) No 260/2012 of the European Parliament and of the Council already prohibits all payees, including traders, from requiring bank accounts to be located in a certain Member State for a payment in euro to be accepted. The trader should remain free to request non-discriminatory charges for the use of a payment instrument, subject to Union law. Moreover, this right is subject to the restrictions introduced by Member States under Article 62(5) of the Directive (EU) 2015/2366.

(25) Directive (EU) 2015/2366 of the European Parliament and of the Council 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 has been significantly reduced. However, in situations where there are no other means available to the trader to reduce the risk of customers' default, including in particular difficulties related to assessing of the creditworthiness of the customer, traders should be allowed to withhold the goods or the service until they receive a confirmation that the payment transaction was properly initiated or, in case of direct debit, request advance payment via credit transfer before goods are dispatched or before the service is provided. Different treatment, however, can be based only on objective and well justified reasons.

(26) This Regulation should not affect the application of the rules on competition, and in particular Articles 101 and 102 TFEU. For instance, this Regulation, and specifically its provisions on access to goods or services, should not affect agreements restricting active sales within the meaning of Commission Regulation (EU) No 330/2010. Agreements imposing on traders obligations not to engage in passive sales in respect of certain customers or groups of 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. Where such an exemption however applies or where contractual restrictions are not covered by Article 101 TFEU, there is a risk that they could be used to circumvent the provisions of this Regulation. The relevant provisions of such agreements should therefore be automatically void, where they impose on traders obligations to act in violation of the prohibitions laid down in its Article 3, 4 and 5. This concerns, for example, contractual restrictions that prevent a trader from responding to unsolicited requests from individual customers for the sale of goods, without delivery, outside the trader's contractually allocated territory for reasons related to the nationality, place of establishment or residence of the customer.

- (27) Member States should designate one or more bodies responsible for taking effective action to ensure compliance with the provisions of this Regulation. Those bodies, which could include courts or administrative authorities, should have the necessary powers to order the trader to comply with this Regulation. Member States should also ensure that effective, proportionate and dissuasive measures can be taken against traders in the event of any breach of this Regulation.
- (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, where appropriate, the bodies set up under Regulation (EU) No 524/2013 of the European Parliament and of the Council.
- (29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. Such evaluations should take into account the overall impact of this Regulation on the internal market and on cross-border e-commerce. The first evaluation should concentrate on assessing the possible extension of the prohibition set out in Article 4(1)(b), with regard to electronically supplied services, including those the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, provided that the trader has the requisite rights for the relevant territories. It should also analyse whether the scope of this Regulation should be extended to services falling outside the scope of Directive 2006/123/EC, taking due account of the particularities of each.
- (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 Council 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.

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

(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, 16, 17 and 38 thereof,

Article 1

Objective and scope

1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by preventing unjustified geo-blocking and other forms of discrimination based, directly or indirectly, on the nationality, place of residence or place of establishment of customers, including by further clarifying certain situations where different treatment cannot be justified under Article 20(2) of Directive 2006/123/EC.
2. This Regulation does not apply to purely internal situations, where all the relevant elements of the transaction are confined within one single Member State.
3. This Regulation does not apply to the activities referred to in Article 2(2) of Directive 2006/123/EC.
4. This Regulation shall be without prejudice to the rules applicable to the field of taxation.
- 4a. This Regulation shall not affect the rules applicable in the field of copyright and neighbouring rights, notably the rules provided for in Directive 2001/29/EC.

5. This Regulation shall be without prejudice to Union law concerning judicial cooperation in civil matters. Compliance with this Regulation shall not be construed as implying that a trader directs 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 limit customers' access to his or her online interface, does not redirect customers to a version of his or her online interface that is different from the online interface to which the customers first sought access, regardless of their nationality or place of residence or place of establishment, does not apply different general conditions of access when selling goods or providing services in situations laid down in this Regulation or where the trader accepts payments instruments issued in another Member State on a non-discriminatory basis, that trader shall not be, on those grounds alone, considered as directing his or her activities to the Member State where the consumer has the habitual residence or domicile. Nor shall that trader, on those grounds alone, be considered as directing his or her activities to the Member State where the consumer has his or her habitual residence or domicile, where the trader provides information and assistance to the consumer subsequent to the conclusion of the contract resulting from the trader's compliance with this Regulation.
6. Article 20(2) of Directive 2006/123/EC shall apply to the extent that this Regulation does not contain more specific provisions.

Article 2

Definitions

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

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

- (b) 'interchange fee' means the same as provided for in Article 2(10) of Regulation (EU) 2015/751;
- (c) 'card-based payment instrument' means the same as provided for in Article 2(20) of Regulation (EU) 2015/751;
- (d) 'payment brand' means the same as provided for in Article 2(30) of Regulation (EU) 2015/751;
- (e) 'payment transaction' means the same as provided for in Article 4(5) of Directive (EU) 2015/2366;
- (g) 'payment service' means the same as provided for in Article 4(11) of Directive (EU) 2015/2366;
- (h) 'payment account' means the same as provided for in Article 4(12) of Directive (EU) 2015/2366;
- (i) 'payment instrument' means the same as provided for in Article 4(14) of Directive (EU) 2015/2366;
- (j) 'direct debit' means the same as provided for in Article 4(23) of Directive (EU) 2015/2366;
- (k) 'credit transfer' means the same as provided for in Article 4(24) of Directive (EU) 2015/2366;
- (l) 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business, craft or profession;
- (m) '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 receives a service or purchases a good, or seeks to do so, within the Union, only for end use;

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

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

(p) 'online interface' means any software, including a website or a part thereof and applications, including mobile applications, operated by or on behalf of a trader, which serves to give customers access to the trader's goods or services with a view to engaging in a 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 his or her 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 his or her online interface that is different from the online interface to which the customer initially sought access, by virtue of its layout, use of language or other characteristics that make it specific to customers with a particular nationality, place of residence or place of establishment, unless the customer's explicit consent to such redirection has been given.

In the event of such redirection with the customer's explicit consent, the version of the online interface to which the customer initially 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 access or the redirection is 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, to which the traders' activities are subject to.

In such instances, the trader shall provide a clear and specific explanation to customers regarding the reasons why such blocking, limitation of access or redirection is necessary in order to ensure such compliance.

That explanation shall be given in the language of the online interface that the customer initially sought to access.

Article 4

Access to goods or services

1. A trader shall not apply different general conditions of access to his or her goods or services, for reasons related to the nationality, place of residence or place of establishment of the customer, where the customer seeks to:
 - (a) buy goods from a trader and those goods are delivered to a location in a Member State to which the trader offers delivery in his or her general conditions of access or are collected at a location agreed upon between the trader and the customer in a Member State in which the trader offers such an option in his or her general conditions of access;
 - (b) receive electronically supplied services from the trader, other than services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form;
 - (c) receive services, other than electronically supplied services from a trader in a physical location within the territory of a Member State where the trader operates.
- 1a. The prohibition set out in paragraph 1 shall not prevent traders from offering general conditions of access, including net sale prices, which differ between Member States or within a Member State and which are offered to customers on a specific territory or to specific groups of customers on a non-discriminatory basis.
- 1b. Mere compliance with the prohibition set out in paragraph 1 does not in itself entail an obligation for a trader to comply with non-contractual national legal requirements relating to the respective goods and services of the Member State of the customer or to inform customers about these requirements.
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 that a trader accepts, he or she 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 for a payment transaction, where:
 - (a) that payment transaction is made through an electronic transaction by credit transfer, direct debit or a card-based payment instrument within the same payment brand and category;
 - (b) authentication requirements are fulfilled pursuant to Directive (EU) 2015/2366; and
 - (c) the payments transactions are in a currency that the trader accepts.
- 1a. Where justified by objective reasons, the prohibition set out in paragraph 1 shall not preclude trader's right to withhold the goods or the provision of the service, 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 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

1. Without prejudice to Regulation (EU) 330/2010 and Article 101 TFEU, this Regulation shall not affect agreements restricting active sales nor those restricting passive sales within the meaning of Regulation (EU) No 330/2010 which concern transactions falling outside the scope of the prohibitions laid down in Articles 3, 4 and 5 of this Regulation.
2. Provisions of agreements imposing on traders obligations, in respect of passive sales within the meaning of Regulation (EU) 330/2010, to act in violation of the prohibition laid down in Articles 3, 4, 5 of this Regulation shall be automatically void.

Article 7

Enforcement

1. Each Member State shall designate a body or bodies responsible for adequate and effective enforcement of this Regulation.
2. Member States shall lay down the rules on the measures applicable for infringements of the provisions of this Regulation and shall ensure that they are implemented. The measures provided for shall be effective, proportionate and dissuasive.

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

Article 8

Assistance to consumers

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

Article 9

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, taking into account the overall impact of the Regulation on the internal market and cross-border e-commerce, including in particular the potential additional administrative and financial burden for traders stemming from the existence of different applicable regulatory consumer contract law regimes. That report shall, where necessary, be accompanied by a proposal for an amendment of this Regulation, in light of legal, technical and economic developments.
2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing the scope of this Regulation as well as the extent of prohibitions laid down in Article 4(1)(b) and whether this Regulation should also apply to electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form, provided that the trader has the requisite rights for the relevant territories.

Article 10

Amendments to 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

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

It shall apply from *[nine months following the day of its publication]*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
- 1a Article 6 shall apply from 24 months from the date of entry into force of the Regulation, in respect of provisions of agreements concluded before *[Date of adoption]* which are compliant with Article 101 TFEU and any equivalent rules of national competition law.

Done at Brussels,

For the European Parliament

The President

For the Council

The President