European Parliament
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Committee on the Internal Market and Consumer Protection

2016/0152(COD)

19.12.2016

***I
DRAFT REPORT

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

Committee on the Internal Market and Consumer Protection

Rapporteur: Róża Gräfin von Thun und Hohenstein

Symbols for procedures

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

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

Amendments to a draft act

Amendments by Parliament set out in two columns

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

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

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.
By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2016)0289),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0192/2016)),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Austrian Federal Council and National Council and the Luxembourg Chamber of Deputies, asserting that the draft legislative act does not comply with the principle of subsidiarity,

– having regard to the opinion of the European Economic and Social Committee of 19 October 2016[1],

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Industry, Research and Energy, the Committee on Culture and Education and the Committee on Legal Affairs (A8-0000/2016),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation
Title 1

[1] Not yet published in the Official Journal.

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

Or. en

Amendment 2

Proposal for a regulation
Recital 1

Text proposed by the Commission	*Amendment*
(1) In order to realise the ***objective of ensuring good functioning*** of the internal market**,** as an area without internal frontiers in which the free movement of inter alia goods and services is ensured, it is not sufficient to abolish, as between Member States, only State barriers. Such abolition can be undermined by private parties putting in place obstacles inconsistent with internal market freedoms. That occurs where traders operating in one Member State block or limit ***the*** access to their online interfaces, such as websites and apps, ***of customers*** from other Member States wishing to engage in cross-border commercial transactions (a practice known as geo-blocking). It also occurs through other actions by certain traders involving the application of different general conditions of access to their goods and services with respect to such ***customers*** from other Member States, both online and	(1) In order to realise the ***full potential*** of the internal market as an area without internal frontiers in which the free movement of inter alia goods and services is ensured, it is not sufficient to abolish, as between Member States, only State barriers. Such abolition can be undermined by private parties putting in place obstacles inconsistent with internal market freedoms. That occurs where traders operating in one Member State block or limit access to their online interfaces, such as websites and apps, ***by consumers*** from other Member States wishing to engage in cross-border commercial transactions (a practice known as geo-blocking). It also occurs through other actions by certain traders involving the application of different general conditions of access to their goods and services with respect to such ***consumers*** from other Member States, both online and offline. ***Whilst*** there may sometimes be

offline. ***Whereas*** there may sometimes be objective justifications for such differential treatment, in other cases traders ***deny*** consumers wishing to engage in cross-border commercial transactions ***access to goods or services***, or apply different conditions ***in this regard, for purely commercial reasons***.	objective justifications for such differential treatment, in other cases ***some*** traders' ***practices deny or limit access to goods or services by*** consumers wishing to engage in cross-border commercial transactions, or apply ***in this regard*** different conditions ***which are not objectively justified***.

Or. en

Justification

Commercial interests are not per se unjustified reasons for differential treatment and was therefore deleted.

Amendment 3

Proposal for a regulation
Recital 2

Text proposed by the Commission	*Amendment*
(2) In this manner certain traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus restricting the rights of ***customers*** and preventing them from benefitting from a wider choice and optimal conditions. Such discriminatory practices are an important factor contributing to the relatively low level of cross-border commercial transactions within the Union, including in the sector of electronic commerce, which prevents the full growth potential of the internal market from being realised. 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.	(2) In this manner**,** certain traders' ***practices*** artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus restricting the rights of ***consumers*** and preventing them from benefitting from a wider choice and optimal conditions. Such discriminatory practices are an important factor contributing to the relatively low level of cross-border commercial transactions within the Union, including in the sector of electronic commerce, which prevents the full growth potential of the internal market from being realised. ***Although there may be different underlying reasons behind such practices, in many cases the legal uncertainty involved and the associated risks as regards the applicable consumer protection and environmental or labelling laws contribute to the traders' unwillingness to engage in commercial relations with consumers from other Member States. In other cases some traders are fragmenting the market in***

order to increase consumer prices. Clarifying in which situations there can be no justification for differential treatment of this kind ***and what the traders' responsibility would be when selling to consumers from different Member States in compliance with this Regulation*** should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

Or. en

Amendment 4

Proposal for a regulation
Recital 3

Text proposed by the Commission	*Amendment*
(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council[17], Member States are to ensure that service providers established in the Union do not treat recipients of services differently on the basis of their nationality or place of residence. However, that provision has not been fully effective in combatting discrimination and ***it*** has not sufficiently reduced legal uncertainty***, particularly because of the possibility to justify the differences in treatment for which it allows and the corresponding difficulties in enforcing it in practice***. Moreover, geo-blocking and other forms of discrimination based on nationality, place of residence or ***place of establishment*** can also arise as a consequence of actions by traders established in third countries, which fall outside the scope of that Directive.	(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council[17], 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. Moreover, geo-blocking and other forms of discrimination based on nationality, place of residence or ***temporary location*** can also arise as a consequence of actions by traders established in third countries, which fall outside the scope of that Directive.
[17] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the	[17] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the

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

Or. en

Amendment 5

Proposal for a regulation
Recital 5

Text proposed by the Commission	*Amendment*
(5) This Regulation aims at preventing discrimination based on ***customers***' nationality, place of residence or ***place of establishment***, including geo-blocking, in cross-border commercial transactions between ***traders and customers*** relating to ***the*** sales of goods and the provision of services within the Union. It seeks to address direct as well as indirect discrimination, thus also covering unjustified differences of treatment on the basis of other distinguishing criteria which lead to the same result as the application of criteria directly based on ***customers***' nationality, place of residence or ***place of establishment***. Such other criteria can be applied, in particular, on the basis of information indicating the physical location of ***customers***, such as the IP address used when accessing an online interface, the address submitted for the delivery of goods, the choice language made or the Member State ***where*** the ***customer's*** payment instrument has been issued.	(5) This Regulation aims at preventing discrimination based on ***consumers***' nationality, place of residence or ***temporary location***, including geo-blocking, in cross-border commercial transactions between ***a trader and a consumer*** relating to sales of goods and the provision of services within the Union. It seeks to address direct as well as indirect discrimination, thus also covering unjustified differences of treatment on the basis of other distinguishing criteria which lead to the same result as the application of criteria directly based on ***consumers***' nationality, place of residence or ***temporary location***. Such other criteria can be applied, in particular, on the basis of information indicating the physical location of ***consumers***, such as the IP address used when accessing an online interface, the address submitted for the delivery of goods, the choice ***of*** language made or the Member State ***in which*** the ***consumer's*** payment instrument has been issued.

Or. en

Justification

Clarification, that the Regulation also covers situations where the consumer is only temporarily visiting another Member State.

Amendment 6

Proposal for a regulation
Recital 5 a (new)

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

Or. en

Justification

Description of purely internal situations inspired by Advocate General Wahl's Opinion in Joined Cases Venturini (C-159/12 to C-161/12, EU:C:2013:529, points 26 and 38).

Amendment 7

Proposal for a regulation
Recital 6

Text proposed by the Commission	*Amendment*
(6) ***Considering*** that some regulatory and administrative barriers for traders have been removed across the Union in certain services sectors as a result of the implementation of Directive 2006/123/EC, in terms of material scope, consistency should be ensured between this Regulation and Directive 2006/123/EC. ***As a consequence, the provisions of this Regulation*** should ***apply inter alia to non-audio-visual electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, subject however to the specific exclusion provided for in Article 4 and the subsequent evaluation of that exclusion as***	(6) ***Given*** that some regulatory and administrative barriers for traders have been removed across the Union in certain services sectors as a result of the implementation of Directive 2006/123/EC, in terms of ***its*** material scope, consistency should be ensured between this Regulation and Directive 2006/123/EC. ***It*** should ***be noted, however, that since the adoption of Directive 2006/123/EC, regulatory and administrative barriers for traders have been partially removed also in other sectors***.

provided for in Article 9. Audio-visual services, including services the main feature of which is the provision of access to broadcasts of sports events and which are provided on the basis of exclusive territorial licenses, are excluded from the scope of this Regulation. Access to retail financial services, including payment services, should therefore also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments.

Or. en

Amendment 8

Proposal for a regulation
Recital 7

Text proposed by the Commission	*Amendment*
(7) Discrimination ***can also occur*** in relation to services in the field of transport***, in particular with respect to the sales of tickets for the transport of passengers. However, in that regard*** Regulation (EC) No 1008/2008 of the European Parliament and of the Council[18], Regulation (EU) No 1177/2010 of the European Parliament and of the Council[19] and Regulation (EU) No 181/2011 of the European Parliament and of the Council[20] 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[21] will be amended to that effect in near future. Therefore, and in order to ensure consistency with the ***scope of application of Directive 2006/123/EC***, services in the field of transport should remain outside the scope of this Regulation.	(7) Discrimination ***also occurs*** in relation to services ***outside the scope of this Regulation, including*** in the field of ***audio-visual, financial, electronic communications,*** transport ***or healthcare services. Audio-visual services, including services the main feature of which is the provision of access to broadcasts of sports events 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 also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments. Concerning electronic communications, the Commission has presented a proposal for a European Electronic Communications Code which upholds the principle of non-discrimination[17a]. When it comes to transport,*** Regulation (EC) No 1008/2008 of the European Parliament and of the Council[18], Regulation (EU) No 1177/2010

of the European Parliament and of the Council[19] and Regulation (EU) No 181/2011 of the European Parliament and of the Council[20] already contain broad prohibitions of ***discrimination*** covering all discriminatory practices that the present Regulation seeks to address. Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council[21] will be amended to that effect in ***the*** near future. ***For healthcare services, Directive 2011/24/EU of the European Parliament and of the Council[21a] already states that patients from other Member States cannot be discriminated against with regard to nationality.*** Therefore, and in order to ensure consistency with the ***acquis***, services in the field of***, inter alia, audio-visual, financial, electronic communications,*** transport ***or healthcare services*** should***, at this stage,*** remain outside the scope of this Regulation.

[17a] Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) - COM(2016)590.

[18] Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

[18] Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

[19] Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).

[19] Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).

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

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

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

[21] Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

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

[21] Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

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

Or. en

Amendment 9

Proposal for a regulation
Recital 9

Text proposed by the Commission	*Amendment*
(9) Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council[22] , 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[23] , 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	***deleted***

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.

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[22] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

[23] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

Or. en

Amendment 10

Proposal for a regulation
Recital 10

Text proposed by the Commission	*Amendment*
(10) This Regulation ***should not affect acts of*** Union ***law*** concerning judicial cooperation in civil matters, notably the provisions on the law applicable to contractual obligations and on jurisdiction set out in Regulations (EC) No 593/2008 ***of the European Parliament and of the Council[24]*** and (EU) 1215/2012 ***of the European Parliament and of the Council[25]*** , 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***	(10) ***Article 23 of Regulation (EC) No 593/2008 of the European Parliament and of the Council[24] allows for Union law to lay down, in relation to particular matters, conflict-of-law rules relating to contractual obligations. Similarly, Article 67 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council[25] allows for other Union instruments to govern jurisdiction in specific matters. In order to enhance legal certainty for both traders and consumers and thus foster cross-border trade,*** this Regulation ***introduces specific provisions concerning conflict-of-law rules and rules on jurisdiction with regard to consumer contracts. A trader could indicate in a***

State for the purpose of such application.

clear and comprehensible manner on his online interface or in his general conditions of access that he intends to sell to consumers from one or more Member States. Where a consumer from a Member State not indicated by the trader nevertheless seeks to conclude such a contract pursuant to Article 4 of this Regulation, the law applicable should be determined pursuant to Articles 3 and 4 of Regulation (EC) No 593/2008. Article 6 of Regulation (EC) No 593/2008 should not apply. Moreover, in such matters proceedings can be brought by the parties in the courts of the Member State in which the trader is domiciled. Article 18 of Regulation (EU) No 1215/2012 should not apply. Irrespective of these measures, this Regulation should be without prejudice to Union ***rules*** 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 and (EU) 1215/2012, including the application of those acts and provisions in individual cases. ***A trader may indicate on his or her website or in his or her general conditions of access, in a clear and comprehensible manner,*** that he ***or she is complying with this Regulation and thereby promotes the aim of this Regulation to abolish unjustified geo-blocking***.

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[24] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

[25] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

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[24] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

[25] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

(Addition of the words "or she" after the

word "he" AND addition of the words "or her" after the word "his": This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Amendment 11

Proposal for a regulation
Recital 11

Text proposed by the Commission	*Amendment*
(11) The discriminatory practices that this Regulation seeks to address typically take place through general terms, conditions and other information set and applied by or on behalf of the trader concerned, as a precondition for obtaining access to the goods or services in question, and that are made available to the public at large. Such general conditions of access include inter alia prices, payment conditions and delivery conditions. They can be made available to the public at large by or on behalf of the trader through various means, such as information published in advertisements**,** on websites or pre-contractual or contractual ***documentation***. Such conditions apply in the absence of ***an*** individually negotiated ***agreement to the contrary entered into directly*** between the trader and the ***customer***. Terms and conditions that are individually negotiated between the trader and the ***customers*** should not be considered general conditions of access for the purposes 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 ***or*** on websites**,** or ***may form part of*** pre-contractual or contractual ***information***. Such conditions apply in the absence of individually negotiated ***terms and conditions*** between the trader and the ***consumers***. Terms and conditions that are individually negotiated between the trader and the ***consumers*** should not be considered general conditions of access for the purposes of this Regulation. ***However, the possibility of individually negotiating terms and conditions or agreeing individually upon additional rights or obligations should not result in geo-blocking or other unjustified forms of discrimination addressed by this Regulation.***

Or. en

Justification

This clarification is necessary if, like in amended Art 4(1)(a), individual agreements concerning delivery are admissible.

Amendment 12

Proposal for a regulation
Recital 12

Text proposed by the Commission	*Amendment*
(12) ***Both*** consumers ***and undertakings*** should be safeguarded from discrimination ***for reasons*** related to their nationality, place of residence or ***place of establishment when acting as customers for the purposes of this Regulation. However, that protection should not extend to customers purchasing a good or a service for resale, because it would affect widely used distribution schemes between undertakings in a business to business context, such as selective and exclusive distribution, which generally allow for manufacturers to select their retailers, subject to compliance with the rules on competition***.	(12) Consumers should be safeguarded from discrimination ***on grounds*** related to their nationality, place of residence or ***temporary location. However, in the case of dual-purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer***.

Or. en

Justification

Alignment with recital 17 of Consumers' Rights Directive and deletion of parts of the text following limitation of scope to consumers.

Amendment 13

Proposal for a regulation
Recital 13

Text proposed by the Commission	*Amendment*
(13) The effects for ***customers*** and on the internal market of discriminatory treatment in connection ***to*** commercial	(13) The effects for ***consumers*** and on the internal market of discriminatory treatment in connection ***with*** commercial

transactions relating to ***the*** sales of goods or the provision of services within the Union are the same, regardless of whether a trader is established in a Member State or in a third country. Therefore, and with a view to ensuring that competing traders are subject to the same requirements in this regard, the measures set out in this Regulation should apply equally to all traders operating within the Union.	transactions relating to sales of goods or the provision of services within the Union are the same, regardless of whether a trader is established in a Member State or in a third country. Therefore, and with a view to ensuring that competing traders are subject to the same requirements in this regard, the measures set out in this Regulation should apply equally to all traders operating within the Union.

Or. en

Amendment 14

Proposal for a regulation
Recital 14

Text proposed by the Commission	*Amendment*
(14) In order to increase the possibility for ***customers*** to access information related to ***the*** sales of goods and the provision of services ***on*** the internal market and to increase transparency, including with respect to prices, traders should not, through the use of technological measures or otherwise, prevent ***customers*** from having full and equal access to online interfaces on the basis of their nationality, place of residence or ***place of establishment***. *Such* technological measures can encompass, in particular, any technologies used to determine the physical location of the ***customer***, including the tracking of that by means of IP address, coordinates obtained through a global navigation satellite system or data related to a payment transaction. However, 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***.	(14) In order to increase the possibility for ***consumers*** to access information related to sales of goods and the provision of services ***within*** the internal market and to increase transparency, including with respect to prices, traders ***and online marketplaces*** should not, through the use of technological measures or otherwise, prevent ***consumers*** from having full and equal access to online interfaces on the basis of their nationality, place of residence or ***temporary location. Full and equal access to online interfaces in the form of a mobile application includes the possibility for the consumer to download and access any version of the mobile application a trader may operate in one or more Member States***. Technological measures ***that prevent such access*** can encompass, in particular, any technologies used to determine the physical location of the ***consumer***, including the tracking of that ***location*** by means of IP address, coordinates obtained through a global navigation satellite system or data related to a payment transaction. However, that prohibition of discrimination with respect

to access to online interfaces should not be understood as creating an obligation for the trader to engage in commercial transactions with ***a consumer***.

Or. en

Justification

A consumer must also have access to a mobile application which a trader uses in another Member State than the Member State of residence of the consumer.

Amendment 15

Proposal for a regulation
Recital 15

Text proposed by the Commission	*Amendment*
(15) Certain traders operate different versions of their online interfaces, targeting ***customers*** from different Member States. While this should remain possible, redirecting a ***customer*** from one version of the online interface to another version without ***his or her explicit consent*** should be prohibited. All versions of the online interface should remain easily accessible to the ***customer*** at all times.	(15) Certain traders operate different versions of their online interfaces, targeting ***consumers*** from different Member States. While this should remain possible, redirecting a ***consumer*** from one version of the online interface to another version without ***the trader providing clear and comprehensive information concerning such redirection*** should be prohibited. All versions of the online interface should remain easily accessible to the ***consumer*** at all times.

Or. en

Justification

Alignment with changes to Article 3(2).

Amendment 16

Proposal for a regulation
Recital 16

Text proposed by the Commission	*Amendment*
(16) In certain cases, blocking**,** limiting of access or redirection without the ***customer's*** consent to an alternative	(16) In certain cases, blocking ***or*** limiting of access**,** or redirection without the ***consumer's*** consent to an alternative

version of an online interface for reasons related to the ***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.

version of an online interface for reasons related to the ***consumer's*** nationality, place ***of*** residence or ***temporary location*** might be necessary in order to ensure compliance with a legal requirement in Union law or in the laws of ***a*** Member ***State*** in accordance with Union law. Such laws can limit ***consumers***' access to certain goods or services, for instance by prohibiting the display of specific content in certain Member States. Traders should not be prevented from complying with such requirements and ***should*** thus be able to block ***or*** limit access ***by,*** or redirect***,*** certain ***consumers***, ***in so far*** as ***may be*** necessary for that reason.

Or. en

Amendment 17

Proposal for a regulation
Recital 17

Text proposed by the Commission

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

Amendment

(17) In a number of specific situations, any differences in the treatment of ***consumers*** through the application of general conditions of access, including outright refusals to sell goods or to provide services, for reasons related to the ***consumers***' nationality, place of residence or ***temporary location*** cannot be objectively justified. In those situations, all such discrimination should be prohibited and ***consumers*** should consequently be entitled, under the specific conditions laid down in this Regulation, to engage in commercial transactions under the same conditions as a local ***consumer*** and ***should*** have full and equal access to any of the different goods or services offered***,*** irrespective of ***his or her*** nationality, place of residence or ***temporary location***. Where necessary, ***a trader*** should therefore take

ensure compliance with that prohibition of discrimination if otherwise the ***customers*** concerned would be precluded from having such full and equal access. However, the prohibition applicable in those situations should not be understood as precluding traders from directing their activities at different Member States or certain groups of ***customers*** with targeted offers and differing ***terms and*** conditions, including through the setting-up of country-specific online interfaces.

measures to ensure compliance with that prohibition of discrimination if otherwise the ***consumer*** concerned would be precluded from having such full and equal access. However, the prohibition applicable in those situations should not be understood as precluding traders from directing their activities at different Member States or certain groups of ***consumers*** with targeted offers and differing ***general*** conditions ***of access***, including through the setting-up of country-specific online interfaces ***which may include different prices***.

Or. en

Amendment 18

Proposal for a regulation
Recital 18

Text proposed by the Commission

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

Amendment

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the ***consumer*** resides. In that situation the ***consumer*** should be able to purchase goods under exactly the same conditions, including ***as to*** price and conditions relating to the delivery of the goods, as similar ***consumers*** who are residents of the Member State of the trader. ***The trader may offer delivery in his or her general terms and conditions or may offer therein the possibility to collect the goods at a location to be agreed upon in a Member State other than the Member State where the consumer has his or her place of residence.*** That may mean that a foreign ***consumer*** will have to pick up the good in that Member State, or in a Member State ***different from that*** to which the trader delivers. In this situation, there is no need to register for value added tax

("VAT") in the Member State of the ***consumer***.

Or. en

Amendment 19

Proposal for a regulation
Recital 19 a (new)

Text proposed by the Commission	*Amendment*
	(19a) The third situation is where consumers seek to receive electronically supplied services the main feature of which is the provision of access to and use of copyright-protected works or other protected subject matter (such as e-books, music, games and software) in respect of which the trader has the requisite rights for the territory from which the consumer seeks to receive such services. In that case too, no delivery is required and the trader can declare and pay VAT in a simplified manner in accordance with the MOSS rules.

Or. en

Amendment 20

Proposal for a regulation
Recital 20

Text proposed by the Commission	*Amendment*
(20) Finally, in the situation where the trader provides services and those services are received by the ***customer*** in ***the*** premises ***of*** or at a location ***chosen by the trader and different from*** the Member State ***of which the customer is a national or*** in which the ***customer*** has his or her place of residence ***or place of establishment***, the application of different	(20) Finally, in the situation where the trader provides services and those services are received by the ***consumer*** in premises or at a location ***not situated in*** the Member State in which the ***consumer*** has his or her place of residence, the application of different general conditions of access for reasons related to such criteria should not be justified either. Those situations

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

Or. en

Amendment 21

Proposal for a regulation
Recital 21

Text proposed by the Commission	*Amendment*
(21) In all those situations, by virtue of the provisions on the law applicable to contractual obligations and on jurisdiction set out in Regulations (EC) No 593/2008 and (EU) 1215/2012, where a trader does not pursue his activities in the Member State of the consumer or does not direct his activities there, ***or where the customer is not a consumer,*** compliance with this Regulation does not ***imply*** any additional costs for the trader associated with jurisdiction or differences in applicable law. Where, ***in*** contrast, a trader does pursue his activities in the consumer's Member State or does direct his activities there, the trader has manifested ***its*** intention to establish commercial relations with consumers from that Member State and thus been able to take account of any such costs.	(21) In all those situations, by virtue of the provisions on the law applicable to contractual obligations and on jurisdiction set out in Regulations (EC) No 593/2008 and (EU) ***No*** 1215/2012, where a trader does not pursue his activities in the Member State of the consumer or does not direct his activities there, compliance with this Regulation does not ***involve*** any additional costs for the trader associated with jurisdiction or differences in applicable law. Where, ***by*** contrast, a trader does pursue his activities in the consumer's Member State or does direct his activities there, the trader has manifested ***his*** intention to establish commercial relations with consumers from that Member State and ***has*** thus been able to take account of any such costs.

Or. en

Amendment 22

Proposal for a regulation
Recital 21 a (new)

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

Or. en

Amendment 23

Proposal for a regulation
Recital 21 b (new)

Text proposed by the Commission	*Amendment*
	(21b) The general terms and conditions must also comply with Union acts such as Directive 1999/44/EC of the European Parliament and of the Council[1a] and Directive 2011/83/EU of the European Parliament and of the Council[1b]. Pursuant to Directive 1999/44/EC a trader is obliged to repair or replace, free of charge, goods which are not in conformity with the contract. The necessary costs to bring the goods into conformity do not entail costs of postage or transport which are additional to those costs necessary to deliver the goods as specified in the general conditions of access or as agreed upon. This Regulation should also not result in an obligation for the trader to bear additional costs in cases where a consumer exercises his right of

withdrawal pursuant to Directive 2011/83/EU.

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

[1b] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

Or. en

Amendment 24

Proposal for a regulation
Recital 22

Text proposed by the Commission	*Amendment*
(22) Traders falling ***under*** the special scheme provided in Chapter 1 of Title XII of Council Directive 2006/112/EC[27] are not required to pay VAT. For those traders, when providing electronically supplied services, the prohibition ***of*** applying different general conditions of access for reasons related to the nationality, place of residence or ***place of establishment*** of the ***customer*** would ***imply*** a requirement to register in order to account for VAT of other Member States and might entail additional costs, which would ***be*** a disproportionate burden, considering the size and characteristics of the traders concerned. Therefore, those traders should be exempted from that prohibition for such	(22) Traders falling under the special scheme provided ***for*** in Chapter 1 of Title XII of Council Directive 2006/112/EC[27] are not required to pay VAT. For those traders, when providing electronically supplied services, the prohibition ***against*** applying different general conditions of access for reasons related to the nationality, place of residence or ***temporary location*** of the ***consumer*** would ***involve*** a requirement to register in order to account for VAT of other Member States and might entail additional costs, which would ***impose*** a disproportionate burden, considering the size and characteristics of the traders concerned. Therefore, those traders should be exempted from that prohibition for such

time as such a scheme is applicable.	time as such a scheme is applicable.
[27] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1–***118***)	[27] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1)**.**

Or. en

Amendment 25

Proposal for a regulation
Recital 23

Text proposed by the Commission	*Amendment*
(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***.	(23) In all those situations, traders may in some cases be prevented from selling goods or providing services to certain ***consumers*** or to ***consumers*** in certain ***Member States***, for reasons related to the nationality, place of residence or ***temporary location*** of the ***consumer***, as a consequence of a specific prohibition or a requirement laid down in Union law or in the laws of ***a*** Member ***State*** in accordance with Union law.

Or. en

Amendment 26

Proposal for a regulation
Recital 24

Text proposed by the Commission	*Amendment*
(24) Under Union law, traders are in principle free to decide which means of	(24) Under Union law, traders are in principle free to decide which means of

payment they wish to accept, including payment brands. However, once this choice has been made, in view of the existing legal framework for payment services, there are no reasons for traders to discriminate ***customers*** within the Union by refusing certain commercial transactions, or by otherwise applying certain different conditions of payment in respect of those transactions, for reasons related to the nationality, place of residence or ***place of establishment*** of the ***customer***. In this particular context, such unjustified unequal treatment for reasons related to the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union should be expressly prohibited ***as well***. It should be further recalled that Regulation (EU) No 260/2012 already prohibits all ***payees, including*** traders***,*** from requiring bank accounts to be located in a certain Member State for a payment in euro to be accepted.

payment they wish to accept, including payment brands. However, once this choice has been made, in view of the existing legal framework for payment services, there are no reasons for traders to discriminate ***between consumers*** within the Union by refusing certain commercial transactions, or by otherwise applying certain different conditions of payment in respect of those ***payment*** transactions, for reasons related to the nationality, place of residence or ***temporary location*** of the ***consumer***. In this particular context, such unjustified unequal treatment for reasons related to the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union should ***likewise*** be expressly prohibited. It should be further recalled that Regulation (EU) No 260/2012 ***of the European Parliament and of the Council***[1a] already prohibits all traders from requiring bank accounts to be located in a certain Member State for a payment in euro to be accepted.

[1a] Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

Or. en

Amendment 27

Proposal for a regulation
Recital 25

Text proposed by the Commission

(25) Directive 2015/2366/EU of the European Parliament and of the Council[28]

Amendment

(25) Directive 2015/2366/EU of the European Parliament and of the Council[28]

introduced strict security requirements for the initiation and processing of electronic payments, which reduced the risk of fraud for all new and more traditional means of payment, especially online payments. Payment service providers are obliged to apply so-called strong ***customer*** authentication, an authentication process that validates the identity of the user of a payment service or of the payment transaction. For remote transactions, such as online payments, the 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.

[28] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35–***127***).

introduced strict security requirements for the initiation and processing of electronic payments, which reduced the risk of fraud for all new and more traditional means of payment, especially online payments. Payment service providers are obliged to apply so-called strong ***consumer*** authentication, an authentication process that validates the identity of the user of a payment service or of the payment transaction. For remote transactions, such as online payments, the security requirements go even further, requiring a dynamic link to the amount of the transaction and the account of the payee, to further protect the user by minimising the risks in case of mistakes or fraudulent attacks. As a result of ***those*** provisions, the risk of payment fraud in national and cross-border purchases is brought to an equal level and should not be used as ***a ground for refusing or discriminating in relation to*** any commercial transactions within the Union.

[28] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

Or. en

Amendment 28

Proposal for a regulation
Recital 26

Text proposed by the Commission	*Amendment*
(26) This Regulation should not affect the application of the rules on competition,	(26) This Regulation should not affect the application of the rules on competition,

and in particular Articles 101 and 102 TFEU. Agreements imposing on traders obligations not to engage in passive sales within the meaning of Commission Regulation (EU) No 330/2010[29] to certain ***customers*** or to ***customers*** in certain territories are generally considered restrictive of competition and cannot normally be exempted from the prohibition laid down in Article 101(1) TFEU. ***Even when they are not caught by Article 101 TFEU, in the context of the application of this Regulation, they disrupt the proper functioning of the internal market and they may be used to circumvent the provisions of this Regulation.*** The relevant provisions of such agreements ***and of other agreements*** in respect of passive sales requiring the trader to act in violation of this Regulation should therefore be automatically void. However, this Regulation, and in particular its provisions on access to goods or services, should not affect agreements restricting active sales within the meaning of Regulation (EU) No 330/2010.	and in particular Articles 101 and 102 TFEU. Agreements imposing on traders obligations not to engage in passive sales within the meaning of Commission Regulation (EU) No 330/2010[29] to certain ***consumers*** or to ***consumers*** in certain territories are generally considered restrictive of competition and cannot normally be exempted from the prohibition laid down in Article 101(1) TFEU. The relevant provisions of such agreements in respect of passive sales requiring the trader to act in violation of this Regulation should therefore be automatically ***null and*** void. However, this Regulation, and in particular its provisions on access to goods or services, should not affect agreements restricting active sales within the meaning of Regulation (EU) No 330/2010.
[29] Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1).	[29] Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1).

Or. en

Justification

Alignment with changes in Article 6.

Amendment 29

Proposal for a regulation
Recital 27

Text proposed by the Commission	*Amendment*
(27) Member States should designate one or more bodies responsible for taking effective action to monitor and to secure compliance with the ***provision*** of this Regulation. Member States should also ensure that effective, proportionate and dissuasive ***penalties*** can be ***imposed on*** traders in the event of any breach of this Regulation.	(27) Member States should designate one or more bodies responsible for taking effective action to monitor and to secure compliance with the ***provisions*** of this Regulation. Member States should also ensure that effective, proportionate and dissuasive ***measures*** can be ***taken against*** traders in the event of any breach of this Regulation.

Or. en

Amendment 30

Proposal for a regulation
Recital 28

Text proposed by the Commission	*Amendment*
(28) Consumers should be ***in the position*** to receive assistance from responsible authorities facilitating the resolution of conflicts with traders**,** arising from the application of this Regulation***, including by way of a uniform complaint form***.	(28) Consumers should be ***able*** to receive assistance from responsible authorities facilitating the resolution of conflicts with traders arising from the application of this Regulation***. To that end, Member States should designate as a body or bodies responsible for providing assistance, inter alia, the Online Dispute Resolution contact points referred to in Regulation (EU) No 524/2013 of the European Parliament and of the Council[1a]***.

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

Or. en

Amendment 31

Proposal for a regulation
Recital 29

Text proposed by the Commission	*Amendment*
(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate, in particular, on the possible extension of the ***prohibition of Article 4(1)(b) to electronically supplied*** services, ***the main feature of*** which ***is the provision of access to and use of copyright protected works or other protected subject matter, provided that the trader has the requisite rights for the relevant territories***.	(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate, in particular, on the possible extension of the ***scope of this Regulation to other sectors such as audio-visual, financial or electronic communication*** services, ***transport services or healthcare services. In particular, the evaluation of the extension to audio-visual services should be based on detailed price and cost data*** which ***only service providers possess. Therefore, those providers should cooperate in the evaluation in order to assess whether the inclusion of those services within the scope of this Regulation would lead to the evolution of business models which are more efficient than those currently used***.

Or. en

Justification

While the current proposal rests in line with the Services Directive, it should be for the Commission to look into the need to extend the scope of this Regulation to sectors currently not covered in this Regulation or the Services Directive.

Amendment 32

Proposal for a regulation
Recital 30

Text proposed by the Commission	*Amendment*
(30) With a view to facilitating the effective enforcement of the rules laid down in this Regulation, the mechanisms to ensure cross-border cooperation among	(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[30] 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.***

competent authorities provided for in Regulation (EC) No 2006/2004 of the European Parliament and of the Council[30] should also be available in relation to those rules.

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

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

Or. en

Amendment 33

Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) In order to allow for the bringing of actions for injunctions aimed at the protection of the collective interests of consumers with respect to acts contrary to this Regulation in accordance with Directive 2009/22/EC of the European Parliament and of the Council[31], that Directive should also be amended, so as to include a reference to this Regulation in its Annex I.

Amendment

(31) In order to allow for the bringing of actions for injunctions aimed at the protection of the collective interests of consumers with respect to acts contrary to this Regulation in accordance with Directive 2009/22/EC of the European Parliament and of the Council[31], that Directive should also be amended, so as to include a reference to this Regulation in its Annex I. ***Consumers should also be encouraged to make good use of mechanisms for the out-of-court resolution of disputes concerning contractual obligations stemming from online sales or services contracts established under Regulation (EU) No 524/2013.***

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

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

Or. en

Justification

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

Amendment 34

Proposal for a regulation
Recital 32

Text proposed by the Commission	*Amendment*
(32) Traders, public authorities and other interested parties should have sufficient time to adapt to, and ensure compliance with, the provisions of this Regulation. In light of the particular characteristics of electronically supplied services, other than services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, it is appropriate to apply the prohibition of Article 4(1)(b) only from a later date with respect to the provision of those services.	***deleted***

Or. en

Amendment 35

Proposal for a regulation
Recital 33

Text proposed by the Commission	*Amendment*
(33) In order to achieve the objective of effectively addressing direct and indirect	(33) In order to achieve the objective of effectively addressing direct and indirect

discrimination based on the nationality, place of residence or ***place of establishment of customers***, it is appropriate to adopt a Regulation**,** which directly applies in all Member States. This is necessary in order to guarantee the uniform application of the non-discrimination rules across the Union and their ***entering*** into force at the same time. Only a Regulation ensures the degree of clarity, uniformity and legal certainty which is necessary in order to enable ***customers*** to fully benefit from those rules.

discrimination based on the nationality, place of residence or ***temporary location of consumers***, it is appropriate to adopt a Regulation which directly applies in all Member States. This is necessary in order to guarantee the uniform application of the non-discrimination rules across the Union and their ***entry*** into force at the same time. Only a Regulation ensures the degree of clarity, uniformity and legal certainty which is necessary in order to enable ***consumers*** to fully benefit from those rules.

Or. en

Amendment 36

Proposal for a regulation
Recital 34

Text proposed by the Commission

(34) Since the objective of this Regulation, namely the prevention of direct and indirect discrimination based on nationality, place of residence or ***place of establishment of customers***, including geo-blocking, in commercial transactions with traders within the Union, cannot be sufficiently achieved by Member States, due to the cross-border nature of the problem and the insufficient clarity of the existing legal framework, but can rather, by reason of its scale and potential effect on trade in the internal market be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

Amendment

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

Or. en

Amendment 37

Proposal for a regulation
Article 1 – title

Text proposed by the Commission	*Amendment*
Objective and scope	***Subject matter***

Or. en

Amendment 38

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission	*Amendment*
1. This Regulation seeks to contribute to the proper functioning of the internal market by preventing discrimination based, directly or indirectly, on the nationality, place of residence or ***place of establishment of customers***.	This Regulation seeks to contribute to the proper functioning of the internal market by preventing discrimination based, directly or indirectly, on the nationality, place of residence or ***temporary location of consumers***.

Or. en

Amendment 39

Proposal for a regulation
Article 1 – paragraph 2

Text proposed by the Commission	*Amendment*
2. This Regulation applies to the following situations:	***deleted***
(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.

Or. en

Amendment 40

Proposal for a regulation
Article 1 – paragraph 3

Text proposed by the Commission	*Amendment*
3. This Regulation does not apply to the activities referred to in Article 2(2) of Directive 2006/123/EC.	***deleted***

Or. en

Amendment 41

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission	*Amendment*
4. This Regulation shall be without prejudice to the rules applicable to the field of taxation.	***deleted***

Or. en

Amendment 42

Proposal for a regulation
Article 1 – paragraph 5

Text proposed by the Commission	*Amendment*
5. This Regulation shall not affect acts of Union law concerning judicial cooperation in civil matters. Compliance with this Regulation shall not be construed as implying that a trader directs his or her activities to the Member State where the consumer has the habitual residence or domicile within the meaning of point (b) of Article 6(1) of Regulation (EC) No 593/2008 and point (c) of Article 17(1) of Regulation (EU) 1215/2012.	***deleted***

Or. en

Amendment 43

Proposal for a regulation
Article 1 – paragraph 6

Text proposed by the Commission	*Amendment*
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.	***deleted***

Or. en

Amendment 44

Proposal for a regulation
Article 1 a (new)

Text proposed by the Commission	*Amendment*
	Article 1a
	Scope
	1. This Regulation does not apply to purely internal situations in which all activities are confined in all respects

within a single Member State.

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

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

4. In so far as the provisions of this Regulation conflict with the provisions of Article 20(2) of Directive 2006/123/EC, the provisions of this Regulation shall prevail.

Or. en

Justification

Article 1 (5) deleted//Aligning with ECJ jurisprudence on purely internal situations. Wording inspired by Advocate General Wahl's Opinion in Joined Cases Venturini (C-159/12 to C-161/12, EU:C:2013:529, point 26)// Moved from Article 1 (2), (3), (4) and (6) and amended.

Amendment 45

Proposal for a regulation
Article 2 – paragraph 1

Text proposed by the Commission	*Amendment*
For the purposes of this Regulation***, the definitions set out in*** Article 7 of Implementing Regulation (EU) No 282/2011***,*** Article 2(10), (20) and (30) of Regulation (EU) 2015/751 of the European Parliament and Council[32] ***and*** Article ***4(8), (9)***, (11), (12), (14), (23), (24) and (30) of Directive (EU) 2015/2366 ***shall apply***.	For the purposes of this Regulation***:***
	(a) 'electronically supplied services' has the meaning assigned to that term by Article 7 of ***Council*** Implementing Regulation (EU) No 282/2011***;***
	(b) 'interchange fee', 'card-based payment instrument', 'payment brand', have the meanings respectively assigned to those terms by Article 2(10), (20) and (30) of Regulation (EU) 2015/751 of the European Parliament and Council[32]***;***

	(c) 'payment transaction', 'payer', 'payment service provider', 'payment account', 'payment instrument', 'direct debit', 'credit transfer' and 'strong customer authentication' have the meanings respectively assigned to those terms by Article ***4(5), (8)***, (11), (12), (14), (23), (24) and (30) of Directive (EU) 2015/2366.
[32] Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123, 19.5.2015, p. 1).	[32] Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123, 19.5.2015, p. 1).

Or. en

Amendment 46

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

Text proposed by the Commission	*Amendment*
(c) 'customer' means a consumer who, or an undertaking which, is a national of a Member State or has his or her place of residence or place of establishment in a Member State, and intends to purchase or purchases a good or a service within the Union, other than for resale;	***deleted***

Or. en

Justification

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

Amendment 47

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

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

Or. en

Amendment 48

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

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

Or. en

Justification

Alignment with the online sales proposal.

Amendment 49

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

Text proposed by the Commission	*Amendment*
(f) 'online interface' means any software, including a website ***and***	(f) 'online interface' means any software, including a website ***or a part***

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;	***thereof and mobile*** applications, operated by or on behalf of a trader, which serves to give ***consumers*** access to the trader's goods or services with a view to engaging in a commercial transaction with respect to those goods or services;

Or. en

Amendment 50

Proposal for a regulation
Article 2 – paragraph 2 – point f a (new)

Text proposed by the Commission	*Amendment*
	(fa) 'online marketplace' means a digital service that allows consumers to conclude online sales or service contracts with traders either on the website of the online marketplace or on a trader's website that uses computing services provided by the online marketplace;

Or. en

Amendment 51

Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission	*Amendment*
1. ***Traders*** shall not, through the use of technological measures or otherwise, block or limit ***customers***' access to ***their*** online interface for reasons related to the nationality, place of residence or ***place of establishment*** of the ***customer***.	1. ***A trader and an online marketplace*** shall not, through the use of technological measures or otherwise, block or limit ***consumers***' access to ***his or her*** online interface for reasons related to the nationality, place of residence or ***temporary location*** of the ***consumer***.

Or. en

Amendment 52

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

Text proposed by the Commission	*Amendment*
Traders shall not, for reasons related to the nationality, place of residence or ***place of establishment of the customer***, redirect ***customers*** to a version of ***their*** online interface that is different from the online interface which the ***customer originally*** sought to access, by virtue of its layout, use of language or other characteristics that make it specific to ***customers*** with a particular nationality, place of residence or ***place establishment***, unless the ***customer gives his or her explicit consent prior to*** such redirection.	***A trader*** shall not, for reasons related to the nationality, place of residence or ***temporary location of a consumer***, redirect ***a consumer*** to a version of ***his or her*** online interface that is different from the online interface which the ***consumer initially*** sought to access, by virtue of its layout, use of language or other characteristics that make it specific to ***a consumer*** with a particular nationality, place of residence or ***temporary location***, unless the ***trader has provided the consumer with clear and comprehensive information concerning*** such redirection.

Or. en

Justification

Consent procedures would be burdensome for both businesses and consumers. For easy handling of interfaces it should be sufficient to have the relevant information concerning redirection and full access to the original interface. Wording concerning the provision of information taken from Art. 5(3) of Directive 2002/58/EC.

Amendment 53

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

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

Or. en

Amendment 54

Proposal for a regulation
Article 3 – paragraph 3

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

Or. en

Amendment 55

Proposal for a regulation
Article 3 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Where a trader blocks or limits access of customers to an online interface or redirects customers to a different version of the online interface in compliance with paragraph 4, the trader shall provide a clear justification. That justification shall be given in the language of the online interface that the customer originally sought to access.	***deleted***

Or. en

Justification

Merge with Article 3(3); simplification of the text.

Amendment 56

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

Text proposed by the Commission	*Amendment*
1. ***Traders*** shall not apply different general conditions of access to ***their*** goods or services, for reasons related to the nationality, place of residence or ***place of establishment*** of the ***customer, in the following situations***:	1. ***A trader*** shall not apply different general conditions of access to ***his or her*** goods or services, for reasons related to the nationality, place of residence or ***temporary location*** of the ***consumer, where the consumer seeks to***:

Or. en

Amendment 57

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

Text proposed by the Commission	*Amendment*
(a) ***where*** the trader ***sells goods and*** those goods ***are not delivered cross-border to*** the Member State of ***the customer by the trader or on his or her behalf***;	(a) ***buy goods and*** the trader ***offers in his or her general conditions of access delivery of*** those goods ***to a location in a Member State other than*** the Member State of ***residence of the consumer, including the option to collect the goods at a location to be agreed upon between the consumer and the trader***;

Or. en

Amendment 58

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

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

Or. en

Amendment 59

Proposal for a regulation
Article 4 – paragraph 1 – point b a (new)

Text proposed by the Commission	*Amendment*
	(ba) receive electronically supplied services the main feature of which is the provision of access to and use of copyright-protected works or other protected subject matter in respect of which the trader has the requisite rights for the territory from which the consumer seeks to receive such services;

Or. en

Amendment 60

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

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

Or. en

Justification

Nationality is irrelevant as this may include purely internal situations. Eg. a German residing in Poland asking for services in Poland.

Amendment 61

Proposal for a regulation
Article 4 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. The prohibition set out in paragraph 1 shall not prevent a trader from applying different general conditions of access between Member States or within a Member State which are offered to consumers in a specific territory or to a specific group of consumers not defined on the basis of nationality, residence or temporary location.

Or. en

Justification

Clarification that a trader can operate different eg. websites, which apply different conditions of access.

Amendment 62

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 1

Text proposed by the Commission	*Amendment*
The prohibition set out in paragraph 1 shall not apply in so far as a specific provision laid down in Union law or in the laws of Member ***States*** in accordance with Union law prevents the trader from selling the goods or providing the services to certain ***customers or to customers in certain territories***	The prohibition set out in paragraph 1 shall not apply in so far as a specific provision laid down in Union law or in the laws of ***a*** Member ***State*** in accordance with Union law prevents the trader from selling the goods or providing the services ***concerned*** to certain ***consumers.***

Or. en

Amendment 63

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 2

Text proposed by the Commission	*Amendment*
With respect to sales of books, the prohibition set out in paragraph 1 shall not preclude traders from applying different prices to customers in certain territories in so far as they are required to do so under the laws of Member States in accordance with Union law.	***deleted***

Or. en

Justification

No need to prominently mention sales of books which are covered by Article 4a, first subparagraph.

Amendment 64

Proposal for a regulation
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. ***Traders*** shall not, for reasons related to the nationality, place of residence or ***place of establishment*** of the ***customer***, the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union, apply different conditions ***of payment for any sales of goods or provision of services***, where:	1. ***A trader*** shall not, for reasons related to the nationality, place of residence or ***temporary location*** of the ***consumer***, the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union, apply different conditions ***for a payment transaction***, where:

Or. en

Amendment 65

Proposal for a regulation
Article 5 – paragraph 1 – point a

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

Or. en

Amendment 66

Proposal for a regulation
Article 5 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) ***the payee can request*** strong customer authentication ***by the payer*** pursuant to ***the*** Directive (EU) 2015/2366; and	(b) strong customer authentication pursuant to Directive (EU) 2015/2366 ***is applied***; and

Or. en

Justification

Alignment with wording of Article 97, Directive 2015/2366.

Amendment 67

Proposal for a regulation
Article 5 – paragraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) the ***payments are*** in a currency that the ***payee*** accepts.	(c) the ***payment transaction is*** in a currency that the ***trader*** accepts.

Or. en

Amendment 68

Proposal for a regulation
Article 5 – paragraph 1 a (new)

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

Or. en

Amendment 69

Proposal for a regulation
Article 5 – paragraph 2

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

Or. en

Amendment 70

Proposal for a regulation
Article 6 – paragraph 1

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

Or. en

Justification

Clarification based on Council wording what kind of passive sales agreements are null and void.

Amendment 71

Proposal for a regulation
Article 7 – title

Text proposed by the Commission	*Amendment*
Enforcement ***by Member State authorities***	Enforcement

Or. en

Amendment 72

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation. ***Member States shall ensure that adequate and effective means exist with the body or bodies designated in order to enforce compliance with this Regulation***.	1. Each Member State shall designate a body or bodies responsible for the ***adequate and effective*** enforcement of this Regulation.

Or. en

Amendment 73

Proposal for a regulation
Article 7 – paragraph 2

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

Or. en

Amendment 74

Proposal for a regulation
Article 8 – paragraph 1

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

Or. en

Justification

Alignment of structure with Article 7(1)

Amendment 75

Proposal for a regulation
Article 8 – paragraph 2

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

Or. en

Justification

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

Amendment 76

Proposal for a regulation
Article 8 a (new)

Text proposed by the Commission	*Amendment*
	Article 8a
	Applicable law and jurisdiction
	1. Where a trader indicates in a clear and comprehensible manner on his or her online interface or in his or her general conditions of access that he or she intends to sell to consumers from one or more Member States, the law applicable to a contract concluded with a consumer from a Member State not indicated by the trader and covered by Article 4 of this Regulation shall be determined pursuant to Articles 3 and 4 of Regulation (EC) 593/2008. Article 6 of Regulation (EC) 593/2008 shall not apply.
	2. In matters relating to a contract covered by paragraph 1, proceedings may be brought by the parties in the courts of the Member State in which the trader is domiciled.

Or. en

Amendment 77

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing whether the ***prohibition of Article 4(1)(b)*** should ***also apply to electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, provided that the trader has the requisite rights for the relevant territories***.	2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing whether the ***scope of this Regulation*** should ***be extended to cover additional sectors such as audio-visual, financial, transport, electronic communication or healthcare services***.

Or. en

Amendment 78

Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission	*Amendment*
1. In the Annex to Regulation (EC) No 2006/2004 the following point [number] is added: "[number] [full title of this Regulation] (OJ L XX, XX.XX.Year, p. X)***, only when the customer is a consumer within the meaning of Article 2(3) of Regulation No XXXX/Year.***"	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)"**.**

Or. en

Amendment 79

Proposal for a regulation
Article 11 – paragraph 3

Text proposed by the Commission	*Amendment*
However, point (b) of Article 4(1) shall apply from 1 July 2018.	***deleted***

Or. en

EXPLANATORY STATEMENT

I. Introduction

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

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

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

II. Position of the Rapporteur

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

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

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

1. Legal certainty for consumers and traders

The Rapporteur is of the view that one of the reasons why traders may be hesitant to engage in commercial relations with consumers from other Member States is the legal uncertainty and the

associated risks as regards the applicable consumer protection, environmental or labelling laws. This is not addressed in the Commission proposal, which leaves considerable uncertainty for traders and consumers alike.
To address this, the Rapporteur proposes a **new Article 8a on applicable law and jurisdiction**. The Article sets out to clarify that in those cases where a trader clearly sets out his intention to sell to consumers from one or more Member States and a consumer from another Member State wants to conclude a contract with this trader under the rights granted by Article 4 of this Regulation, then the trader will treat the consumer in the same way as he treats local consumers. In other words, the trader would be able to apply the consumer protection, environmental, labelling or product safety requirements of his Member State. Likewise, the responsible court should be that of the trader's Member State.

2. Scope

In the interest of proportionality, the rapporteur proposes to **limit the scope of the regulation to consumers only**, with one important exception, namely in case of dual purpose contracts with a limited trade focus, that person should also be considered as a consumer.
The Rapporteur can accept that at this stage the **scope of the regulation is aligned with that of the Services Directive** to the extent possible in order to ensure consistency, in other words non-economic services of general interest, transport services, audio-visual services, gambling, healthcare and certain other services are excluded from the scope of the Regulation. However, the Rapporteur believes that it is necessary to evaluate this in the context of the first review of the regulation.
However, the Rapporteur disagrees with the Commission on the question of how to treat electronically supplied services for the provision of access to and use of copyright-protected works or other protected subject-matter. The Rapporteur believes that there are numerous incidents of discrimination in relation to **electronically supplied services such as e-books, e-music, games or software**. She therefore proposes to include them within the scope of Article 4, provided that the trader has the requisite rights for the relevant territories.

3. Additional clarifications

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

- A clarification that the non-discrimination prohibition covers not only nationality and place of residence but also **temporary location**
- A clarification that **purely internal situations** without a cross-border component are excluded (Art 1a)
- A simplification as regards Art 3 access to online interfaces: the Rapporteur considers the **explicit consent** provision suggested by the Commission as too burdensome both for business and consumers and considers it sufficient to impose an information obligation concerning redirection as well as full access to the original interface. The Rapporteur clarifies that the explanations are to be given in the language of the online interface. The rapporteur also considers that the access to online interfaces shouldn't be limited not only by traders but also by online marketplaces.
- A clarification in Art 4 that **traders can still apply different general conditions of**

access between Member States or within a Member State offered to consumers on a specific territory or a specific group of consumers, as long as these are not defined on the basis of nationality, residence or temporary location. In other words, a trader would still be able to offer different prices in different web portals, as long as a consumer approaching a given web shop from another Member State is able to buy the product under the same conditions as a local consumer.

- A clarification in Art 5 on payment methods to **avoid increased risks of fraud linked to certain payment methods** by clarifying that the trader has the right to withhold a good or service until he has received confirmation that the payment transaction has been properly initiated.