



24.1.2017

## **OPINION**

of the Committee on Culture and Education

for the Committee on the Internal Market and Consumer Protection

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

(COM(2016)0289 – C8-0192/2016 – 2016/0152(COD))

Rapporteur: Therese Comodini Cachia

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## SHORT JUSTIFICATION

### **Purpose and scope**

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

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

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

### **Overall position of the Rapporteur**

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

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

### **The review clause**

The Rapporteur supports both the Commission's decision to leave “electronically supplied services, other than services the main feature of which is the provision of access to and use of copyright protected works and other protected subject matter” outside the scope of the current Regulation and to assess this derogation as part of the first review after two years. Cultural

goods and services – such as e-books and music streaming services – have distinct business models and specific characteristics that require further and careful examination. The Rapporteur believes that it is right to re-examine their inclusion after two years, but insists that the review process must pay particular heed to the specific nature of cultural goods and services.

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

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

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

## **AMENDMENTS**

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

### **Amendment 1**

#### **Proposal for a regulation**

##### **Recital 1**

*Text proposed by the Commission*

(1) ***In order to realise the objective of ensuring good functioning of the internal market, as*** an area without internal frontiers in which the free movement of inter alia goods and services is ensured, ***it is not sufficient to abolish, as between Member States, only State barriers. Such abolition*** can be undermined by private parties putting in place obstacles inconsistent with internal market freedoms.

*Amendment*

(1) ***It is imperative to establish*** an area without internal frontiers in which the free movement of inter alia goods and services is ensured, ***as well as to achieve the objectives set in the New Digital Market Strategy. Remaining unjustified barriers should be removed in order to ensure a fully functioning single market for goods and services, notably in the cultural sector, which is of crucial importance in***

*That occurs* where traders operating in one Member State block or limit the access to their online interfaces, such as websites and *apps*, of customers from other Member States wishing to engage in cross-border commercial transactions (a practice known as geo-blocking). *It also occurs* through other actions by certain traders involving the application of different general conditions of access to their goods and services with respect to such customers from other Member States, both online and offline. Whereas there may sometimes be objective justifications for such differential treatment, in other cases traders deny consumers wishing to engage in cross-border commercial transactions access to goods or services, or apply different conditions in this regard, for purely commercial reasons.

*order to promote cultural diversity, disseminate culture and engender a common cultural heritage across the Union. It is not sufficient to abolish* only State barriers *since this* can be undermined by private parties putting in place obstacles inconsistent with internal market freedoms. *Such barriers occur* where traders operating in one Member State block or limit the access to their online interfaces, such as websites and *applications*, of customers from other Member States wishing to engage in cross-border commercial transactions (a practice known as geo-blocking). *They also occur* through other actions by certain traders involving the application of different general conditions of access to their goods and services with respect to such customers from other Member States, both online and offline. Whereas there may sometimes be objective justifications for such differential treatment *as provided for in Directive 2006/123/EC*, in other cases traders deny consumers wishing to engage in cross-border commercial transactions access to goods or services, or apply different conditions in this regard, for purely commercial reasons.

## Amendment 2

### Proposal for a regulation Recital 2

#### *Text proposed by the Commission*

(2) In this manner certain traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus restricting the rights of customers and preventing them from benefitting from a wider choice and optimal conditions. Such discriminatory practices are an important factor contributing to the relatively low level of cross-border commercial transactions within the Union, including in

#### *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.

### Amendment 3

#### Proposal for a regulation

##### Recital 3

###### *Text proposed by the Commission*

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council<sup>17</sup>, 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.

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<sup>17</sup> 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).

the sector of electronic commerce, which prevents the full growth potential of the internal market from being realised. ***This Regulation specifies the situations*** in which there can be no justification for differential treatment of this kind, ***which*** should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

###### *Amendment*

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council<sup>17</sup>, 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, ***unjustified*** geo-blocking and other forms of discrimination based on nationality, place of residence or place of establishment can also arise as a consequence of actions by traders established in third countries, which fall outside the scope of that Directive.

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<sup>17</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

## Amendment 4

### Proposal for a regulation

#### Recital 5

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 5

### Proposal for a regulation

#### Recital 6

*Text proposed by the Commission*

(6) Considering that some regulatory and administrative barriers for traders have been removed across the Union in certain services sectors as a result of the implementation of Directive 2006/123/EC, in terms of material scope, consistency should be ensured between this Regulation

*Amendment*

(6) Considering that some regulatory and administrative barriers for traders have been removed across the Union in certain services sectors as a result of the implementation of Directive 2006/123/EC, in terms of material scope, consistency should be ensured between this Regulation

and Directive 2006/123/EC. As a consequence, the provisions of this Regulation should apply inter alia to non-audio-visual electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, *subject however* to the specific exclusion provided for in Article 4 *and the subsequent evaluation of that exclusion* as provided for in Article 9. Audio-visual services, including services the main feature of which is the provision of access to broadcasts of sports events and which are provided on the basis of exclusive territorial licenses, are excluded from the scope of this Regulation. Access to retail financial services, including payment services, should therefore also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments.

and Directive 2006/123/EC. As a consequence, the provisions of this Regulation should apply inter alia to non-audio-visual electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter. *Owing to the particular nature of such services, they are currently covered by a specific exclusion provided for in Article 4, which will subsequently be subject to evaluation* as provided for in Article 9 *with regard to the specific nature of cultural goods and services*. Audio-visual services, including services the main feature of which is the provision of access to broadcasts of sports events and which are provided on the basis of exclusive territorial licenses, are excluded from the scope of this Regulation. Access to retail financial services, including payment services, should therefore also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments.

## Amendment 6

### Proposal for a regulation Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 7

**Proposal for a regulation**  
**Recital 7**

*Text proposed by the Commission*

(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<sup>18</sup>, Regulation (EU) No 1177/2010 of the European Parliament and of the Council<sup>19</sup> and Regulation (EU) No 181/2011 of the European Parliament and of the Council<sup>20</sup> 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<sup>21</sup> 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.***

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<sup>18</sup> 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).

<sup>19</sup> 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).

<sup>20</sup> 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

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

*and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).*

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

## **Amendment 8**

### **Proposal for a regulation**

#### **Recital 8**

*Text proposed by the Commission*

(8) This Regulation should be without prejudice to the rules applicable in the field of taxation, given that the Treaty on the Functioning of the European Union (TFEU) provides specific base for action at Union level as regards taxation matters.

*Amendment*

(8) This Regulation should be without prejudice to the rules applicable in the field of taxation, given that the Treaty on the Functioning of the European Union (TFEU) provides **a** specific base for action at Union level as regards taxation matters.

## **Amendment 9**

### **Proposal for a regulation**

#### **Recital 11**

*Text proposed by the Commission*

(11) The discriminatory practices that this Regulation seeks to address typically take place through general terms, conditions and other information set and applied by or on behalf of the trader concerned, as a precondition for obtaining access to the goods or services in question, and that are made available to the public at large. Such general conditions of access include inter alia prices, payment conditions and delivery conditions. They can be made available to the public at large by or on behalf of the trader through various means, such as information published in advertisements, on websites or pre-contractual or contractual documentation. Such conditions apply in

*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.

the absence of an individually negotiated agreement to the contrary entered into directly between the trader and the customer. Terms and conditions that are individually negotiated between the trader and the customer should not be considered general conditions of access for the purposes of this Regulation. ***Terms and conditions should not be considered to be individually negotiated where they have been prescribed by one party and the other party has not been able to influence their content. In the case of an agreement between a trader and a customer, the trader should bear the burden of proving that it has been individually negotiated.***

#### *Justification*

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

## **Amendment 10**

### **Proposal for a regulation**

#### **Recital 12**

##### *Text proposed by the Commission*

(12) Both consumers and undertakings should be safeguarded from discrimination for reasons related to their nationality, place of residence or place of establishment when acting as customers for the purposes of this Regulation. However, that protection should not extend to customers purchasing a good or a service for resale, because it would affect widely used distribution schemes between undertakings in a business to business context, such as selective and exclusive distribution, which generally allow for manufacturers to select their retailers, subject to compliance with the rules on competition.

##### *Amendment*

(12) Both consumers and undertakings should be safeguarded from ***direct or indirect*** discrimination for reasons related to their nationality, place of residence or place of establishment when acting as customers for the purposes of this Regulation. However, that protection should not extend to customers purchasing a good or a service for resale, because it would affect widely used distribution schemes between undertakings in a business to business context, such as selective and exclusive distribution, which generally allow for manufacturers to select their retailers, subject to compliance with the rules on competition.

## Amendment 11

### Proposal for a regulation Recital 14

*Text proposed by the Commission*

(14) In order to increase the possibility for customers to access information related to the sales of goods and the provision of services on the internal market and to increase transparency, including with respect to prices, traders should not, through the use of technological measures or otherwise, prevent customers from having full and equal access to online interfaces on the basis of their nationality, place of residence or place of establishment. Such technological measures can encompass, in particular, any technologies used to determine the physical location of the customer, including the tracking of that by means of IP address, coordinates obtained through a global navigation satellite system or data related to a payment transaction. However, *that* prohibition of discrimination with respect to access to online interfaces should not be understood as creating an obligation for the trader to engage in commercial transactions with customers.

## Amendment 12

### Proposal for a regulation Recital 15

*Text proposed by the Commission*

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

*Amendment*

(14) In order to increase the possibility for customers to access information related to the sales of goods and the provision of services on the internal market and to increase transparency, including with respect to prices, traders should not, through the use of technological measures or otherwise, prevent customers from having full and equal access to online interfaces on the basis of their nationality, place of residence or place of establishment. Such technological measures can encompass, in particular, any technologies used to determine the physical location of the customer, including the tracking of that by means of IP address, coordinates obtained through a global navigation satellite system or data related to a payment transaction. However, *the* prohibition of discrimination with respect to access to online interfaces should not be understood as creating an obligation for the trader to engage in commercial transactions with customers.

*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

the customer at all times.

*for use by* the customer at all times.

### *Justification*

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

## **Amendment 13**

### **Proposal for a regulation**

#### **Recital 18**

##### *Text proposed by the Commission*

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

##### *Amendment*

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

## **Amendment 14**

### **Proposal for a regulation**

#### **Recital 19**

##### *Text proposed by the Commission*

(19) The second situation is where the trader provides electronically supplied services, other than services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, such as

##### *Amendment*

(19) The second situation is where the trader provides electronically supplied services, other than services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, such as

cloud services, data warehousing services, website hosting and the provision of firewalls. In this case, no physical delivery is required, as the services are being supplied electronically. The trader can declare and pay VAT in a simplified manner in accordance with the rules on VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/2011<sup>26</sup>.

cloud services, data warehousing services, website hosting and the provision of firewalls. In this case, no physical delivery is required, as the services are being supplied electronically. The trader can declare and pay VAT in a simplified manner in accordance with the rules on *the* VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/2011<sup>26</sup>.

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<sup>26</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

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<sup>26</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

## Amendment 15

### Proposal for a regulation Recital 20

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 16

### Proposal for a regulation Recital 21

*Text proposed by the Commission*

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

*Amendment*

(21) In all those situations, by virtue of the provisions on the law applicable to contractual obligations and on jurisdiction set out in Regulations (EC) No 593/2008 and (EU) 1215/2012, where a trader does not pursue his activities in the Member State of the consumer or does not direct his activities there, compliance with this Regulation does not ***entail*** any additional costs for the trader associated with jurisdiction or differences in applicable law. ***This holds equally where the customer is not a consumer but an undertaking making a purchase as an end user and thus transacting in a manner indistinguishable from that of a consumer.*** Where, in contrast, a trader does pursue his activities in the ***customer's*** Member State or does direct his activities there, the trader has manifested ***his or her*** intention to establish commercial relations with ***customers*** from that Member State and ***has*** thus been able to take account of any such costs.

*Justification*

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

## Amendment 17

### Proposal for a regulation Recital 21 a (new)

*Text proposed by the Commission*

*Amendment*

***(21a) The Regulation should take into account the principle of proportionality, in particular for micro, small and medium***

*enterprises, and the right of market operators to engage in market selection by directing their activities at different Member States or certain groups of customers. The Regulation should therefore ensure the balance between the principle of freedom of trade and the free choice of business strategy and the need to overcome unjustified geo-blocking practices towards customers and undertakings in different Member States.*

## Amendment 18

### Proposal for a regulation Recital 24

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 19

### Proposal for a regulation Recital 25

#### *Text proposed by the Commission*

(25) Directive 2015/2366/EU of the European Parliament and of the Council<sup>28</sup> 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.

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

## Amendment 20

#### *Amendment*

(25) Directive 2015/2366/EU of the European Parliament and of the Council<sup>28</sup> introduced strict security requirements for the initiation and processing of electronic payments, which reduced the risk of fraud for all new and more traditional means of payment, especially online payments. Payment service providers are obliged to apply so-called strong customer authentication, an authentication process that validates the identity of the user of a payment service or of the payment transaction. For remote transactions, such as online payments, the security requirements go even further, requiring a dynamic link to the amount of the transaction and the account of the payee, to further protect the user by minimising the risks in case of mistakes or fraudulent attacks. As a result of these provisions, *cross-border purchases do not entail a higher risk of payment fraud than national purchases, meaning that the risk of payment fraud* should not be used as an argument to refuse or discriminate *against* any commercial transactions within the Union.

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<sup>28</sup> 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).

**Proposal for a regulation**  
**Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 21**

**Proposal for a regulation**  
**Recital 26**

*Text proposed by the Commission*

*Amendment*

(26) This Regulation should not affect the application of the rules on competition, 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<sup>29</sup> 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

(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<sup>29</sup> to certain customers or to customers in certain territories are generally considered ***to restrict*** competition and cannot normally be exempted from the prohibition laid down in Article 101(1) TFEU. Even when ***such agreements*** are not ***covered*** by Article 101 TFEU, in the context of the application of this Regulation, they disrupt the proper functioning of the internal market and they may be used to circumvent the provisions of this Regulation. The relevant provisions of such agreements and of other agreements in respect of passive sales requiring the trader to act in violation

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.

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<sup>29</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1).

## Amendment 22

### Proposal for a regulation Recital 29

#### *Text proposed by the Commission*

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate, in particular, on the possible extension of the prohibition of Article 4(1)(b) to electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, provided that the trader has the requisite rights for the relevant territories.

## Amendment 23

### Proposal for a regulation Recital 33

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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.

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<sup>29</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1).

#### *Amendment*

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate, in particular, on the possible extension of the prohibition of Article 4(1)(b) to electronically supplied services, the main feature of which is the provision of access to and use *or sale* of copyright protected works or other protected subject matter, provided that the trader has the requisite rights for the relevant territories. ***The first evaluation should take into account the legal developments in Member States with regard to the copyright reform, audiovisual media services and cross-border portability of online content services.***

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*Text proposed by the Commission*

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

*Amendment*

(33) In order to achieve the objective of effectively **preventing** direct and indirect discrimination based on the nationality, place of residence or place of establishment of customers, **and of providing effective means of redress to those customers who consider themselves affected by it**, it is appropriate to adopt a Regulation, which applies **directly** in all Member States. This is necessary in order to guarantee the uniform application of the non-discrimination rules across the Union and their **entry** into force at the same time. Only a Regulation ensures the degree of clarity, uniformity and legal certainty which is necessary in order to enable customers to fully benefit from those rules.

**Amendment 24**

**Proposal for a regulation**  
**Article 1 – paragraph 2 – point a**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 25**

**Proposal for a regulation**  
**Article 1 – paragraph 2 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

a national of another Member State;

is a national of another Member State;

## **Amendment 26**

### **Proposal for a regulation**

#### **Article 1 – paragraph 2 – point c**

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 27**

### **Proposal for a regulation**

#### **Article 1 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. This Regulation shall be without prejudice to the rules applicable in the field of copyright and neighbouring rights.***

## **Amendment 28**

### **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

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

## Amendment 29

### Proposal for a regulation

#### Article 2 – paragraph 2 – point e

*Text proposed by the Commission*

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

*Amendment*

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

*Justification*

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

## Amendment 30

### Proposal for a regulation

#### Article 3 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

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

*Amendment*

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

*Justification*

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

## Amendment 31

### Proposal for a regulation

#### Article 3 – paragraph 4

*Text proposed by the Commission*

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

*Amendment*

4. Where a trader blocks or limits access of customers to an online interface or redirects customers to a different version of the online interface in compliance with paragraph 3, the trader shall provide a clear justification. That justification shall be given in the language of the online interface that the customer originally sought to access.

**Amendment 32**

**Proposal for a regulation**

**Article 4 – paragraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 33**

**Proposal for a regulation**

**Article 4 – paragraph 1 – point c**

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 34

### Proposal for a regulation

#### Article 5 – paragraph 2

*Text proposed by the Commission*

2. The prohibition set out in paragraph 1 shall not preclude traders' ***possibility to request charges*** for the use of a card-based payment instrument for which interchanges fees are not regulated under Chapter II of Regulation (EU) 2015/751 and for those payment services to which Regulation (EU) No 260/2012 does not apply. Those charges shall not exceed the costs borne by the trader for the use of the payment instrument.

*Amendment*

2. The prohibition set out in paragraph 1 shall not preclude traders ***from charging*** for the use of a card-based payment instrument for which interchanges fees are not regulated under Chapter II of Regulation (EU) 2015/751 and for those payment services to which Regulation (EU) No 260/2012 does not apply. Those charges shall not exceed the costs borne by the trader for the use of the payment instrument.

## Amendment 35

### Proposal for a regulation

#### Article 7 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation. Member States shall ensure that adequate and effective means exist with the body or bodies designated in order to enforce compliance with this Regulation, ***including through cross-border cooperation mechanisms***.

*Justification*

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

## Amendment 36

### Proposal for a regulation

#### Article 8 – title

*Text proposed by the Commission*

*Amendment*

Assistance to **consumers**

Assistance to **customers**

*Justification*

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

## **Amendment 37**

### **Proposal for a regulation**

#### **Article 8 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

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

*Justification*

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

## **Amendment 38**

### **Proposal for a regulation**

#### **Article 9 – paragraph 2**

*Text proposed by the Commission*

*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

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.

requisite rights for the relevant territories.  
***The evaluation shall take due account of the specificities of copyright-protected cultural goods and services.***

#### *Justification*

*The review clause is specifically designed to consider extending the Regulation's scope to include "electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter". This amendment stresses that the specific nature of cultural goods and services must be fully considered in the evaluation.*

## PROCEDURE – COMMITTEE ASKED FOR OPINION

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