

# DISCRIMINATION OF CONSUMERS IN THE DIGITAL SINGLE MARKET

Study prepared for Internal Market  
and Consumer Protection Committee



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT  
ECONOMIC AND SCIENTIFIC POLICY **A**

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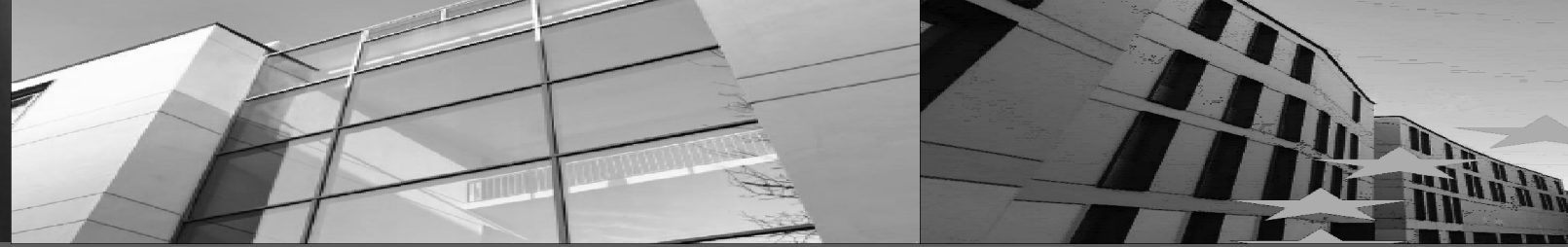
Prof. Dr. Hans Schulte-Nölke  
European Legal Studies Institute Osnabrück

## Overview

- Discriminatory behaviour
- Current legal framework and enforcement
- Proposals for EU action

## Basic data

- 74% of retailers in the EU did not sell to other Member States (2011)
- 9% of all consumers in the EU bought online from another Member State (2011)
- 61% of the attempted cross-border purchases successful (2009)



## Types of discriminatory behaviour

- Refusing to take orders
- Re-routing (sometimes with different, but not necessarily higher prices, lesser choice or variations in quality)
- Different conditions for customers from other (Member) States, e.g. pricing, payment methods, delivery costs, limitation of delivery options
- Geographical restrictions of use of digital content

## Reasons

- More expensive or otherwise more burdensome delivery
- Difficulties in enforcing payment
- Language barriers (e.g. instruction, execution, complaint handling)
- Lack of legal certainty, in particular when supplying consumers in other Member States
- Practical difficulties (e.g. for travel services which include transport, services which require the service provider's physical presence)
- Different customer preferences
- Making use of a higher level of price

## **CURRENT LEGAL FRAMEWORK**

- Fundamental rights and freedoms
- Article 20 (2) of Services Directive
- Private international law - Brussels I and Rome I
- Competition law
- Intellectual property law

## **Fundamental rights and freedoms**

- Human rights (e.g. right not to be discriminated against on grounds of race or ethnic origin)
- EU Citizens' rights (e.g. right not to be discriminated against on grounds of nationality of a certain Member State)
- Fundamental freedoms of the internal market (e.g. free movement of persons and services).
- Article 20 Services Directive: discrimination of recipients of services on grounds of their nationality or place of residence

## Article 20 Services Directive 2006/123/EC: *Non-discrimination*

(1) Member States shall ensure that the recipient is not made subject to discriminatory requirements based on his nationality or place of residence. => addresses different treatment *by public authorities*

(2) Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria. => addresses different treatment *by service providers*

⇒ ~~Simply a programmatic statement or 'hard and fast rule'?~~

⇒ Transparency rule ('comply or explain')?

## **PRIVATE INTERNATIONAL LAW - BRUSSELS I AND ROME I**

- Divergences in consumer protection and contract law rules as reasons for discrimination
- EU legislation and remaining divergences
- The mechanism of Art. 6 (2) Rome I Reg.
- Common European Sales Law and Alternative Dispute Resolution (ADR/ODR) as a way forward?

## **PROPOSALS FOR EU ACTION – ‘Carrot or the stick?’**

### **Policy recommendations:**

- Obliging e-shops to disclose those countries from which they do not accept orders and whether there are different conditions for certain countries
- Removing reasons for not making use of the internal market, e.g. Common European Sales Law, ODR schemes
- More rigorously enforcing competition law
- Prohibition of geographically restricted licences within the EU
- Approximating IP legislation to create a unified framework of EU IP law
- Customer discrimination complaints website
- Publishing examples of best and worst practice



Prof. Dr. Hans Schulte-Nölke  
European Legal Studies Institute Osnabrück  
schulte-noelke@uni-osnabrueck.de

STUDY

**Discrimination of Consumers in the Digital Single Market**

available at:

[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507456/IPOL-IMCO\\_ET%282013%29507456\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507456/IPOL-IMCO_ET%282013%29507456_EN.pdf)