

NEW EU REGULATION - THE END OF GEO-BLOCKING WHEN SHOPPING ONLINE

A new EU Regulation, which will take effect on 3 December 2018, provides for borderless online shopping.¹ Traders are obliged to treat online customers equally, regardless of which EU-member state they come from. Geo-blocking will be abolished in many cases. However, digital content protected under copyright law and some other services are not yet affected by the Regulation. Following the abolition of roaming charges and the adoption of the Portability-Regulation, this new Regulation is the next step in contributing to the European Union strategy of creating a properly functioning digital internal market without unjustified geo-blocking and other forms of discrimination based on a customer's nationality, place of residence or place of establishment.

OBJECTIVE AND SCOPE

Geo-blocking is a practice which restricts an online customer's access and ability to purchase products or services on a website that is located in another EU member state. Such practice has been found to be inconsistent with internal market freedoms which ensure free movement of goods and services. It has been determined that customers should be able to benefit from the integrated internal market both offline and online. The new Regulation aims to eliminate barriers in e-commerce by preventing discrimination, including unjustified geo-blocking, of consumers and enterprises with regard to access to prices and sales or payment conditions when purchasing products or employing services in cross-border transactions within the European Union.

The Regulation does not currently apply to services with regard to copyright-protected content, such as digital media like music streaming services, e-books, online games or software. Furthermore, services in the field of finances, audiovisual media, transport, healthcare and social services are also excluded from the scope of the Regulation. The European Commission will conduct an assessment of the impact of the prohibition of geo-blocking on the internal market and of a possible extension of the geo-blocking prohibition to the currently excluded services two years after the implementation of the new Regulation.

The most important changes of the new Regulation include:

ACCESS TO ONLINE INTERFACES

It is not permitted that traders, for reasons related to a customer's nationality, place of residence or place of establishment, block or limit the customer's access to the trader's online interface, or redirect the customer to an online interface different than initially sought, unless the customer has explicitly consented to such redirection. Consequently,

¹ The Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004, (EU) 2017/2394 and Directive 2009/22/EC.

customers must be permitted to independently choose a website for online shopping and must not be blocked or automatically redirected to another website.

ACCESS TO GOODS OR SERVICES

Non-local customers must be entitled to engage in transactions under the same conditions as a local customer and must have full and equal access to any goods and services offered in the following fields of sale:

- Physical goods (if delivered to a member state to which delivery is offered by the trader or if collected by the consumer);
- Online services (such as cloud services, data-warehousing, website hosting, provision of firewalls or use of search engines and internet directories); and
- Entertainment services (such as hotel accommodation, sporting events, car rental or entrance tickets for music festivals or leisure parks).

Traders are not prohibited from offering, on a non-discriminatory basis, different conditions, including different prices, at different points of sale (e.g., website or bricks and mortar shop), or to make specific offers only to a specific territory within an EU member state. Furthermore, traders are not obliged to deliver goods cross-border to another EU member state where the trader would not otherwise offer the possibility of such delivery to its customers.

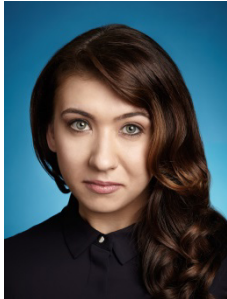
NON-DISCRIMINATION FOR REASONS RELATED TO PAYMENT

Traders will not be allowed to apply different terms of payment to customers for reasons related to customers' nationality, place of residence or place of establishment. In principle, traders are free to decide which means of payment they wish to accept (e.g., debit or credit cards). However, once this choice has been made traders must not discriminate against customers within the European Union by refusing certain transactions or by otherwise applying different conditions of payment in respect of those transactions.

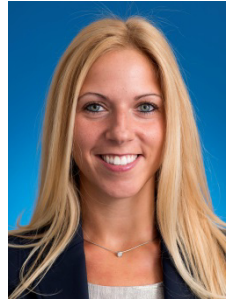
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