



30.3.2017

# **OPINION**

of the Committee on Legal Affairs

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: Lidia Joanna Geringer de Oedenberg

PA\_Legam

## SHORT JUSTIFICATION

Your rapporteur welcomes the Commission's proposal but believes that it does not go far enough in abolishing geo-blocking. The electronic provision of non-audiovisual copyright protected works or services, including e-books, software, computer games and music should be included in the scope of the Regulation from the entry into force, and at the first review after two years of application it should be evaluated whether audiovisual works should also be included in its scope. A precondition for such inclusion would however be that the trader holds a copyright licence for such works or is otherwise a rightsholder in all relevant territories. It is furthermore necessary to ensure legal clarity regarding the meaning of "directing an activity", particularly in those cases where a trader is targeting a specific Member State and the applicable choice of law rules leads to the application of the law of the Member State of the consumer. There should be no doubt about which rules apply in such situations. However, it is also essential to prevent traders from discriminating in other cases and to oblige them to sell to consumers and other traders regardless of the country of origin or residence of the consumer. The applicable law on such non-directed transactions should therefore be that of the Member State of the seller, not least in order to make life easier for small and medium-sized enterprises, for which the burden to ensure resources to effectively trade with consumers from several different legal system would be disproportionate. It is finally essential that the Regulation will start to apply as soon as possible.

## AMENDMENTS

The Committee on Legal Affairs 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

##### Title

*Text proposed by the Commission*

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

*Amendment*

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on addressing geo-blocking and other forms of discrimination based on *consumers' country of origin*, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

*Justification*

*The word "nationality" is to be changed into "country of origin or residence" throughout the*

entire text”.

## Amendment 2

### 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***. 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.***

## Amendment 3

### Proposal for a regulation

#### Recital 2

*Amendment*

(1) In order to realise the objective of ensuring good functioning of the internal market, as an area ***where most barriers to trade have been removed and*** in which the free movement of, inter alia, ***people***, goods and services is ensured, ***and in order to achieve the objectives set out in the Digital Market Strategy***, it is not sufficient to abolish, as between Member States, only ***administrative red-tape***. Such abolition can be undermined by ***certain*** private parties putting in place obstacles ***that are*** inconsistent with ***the principles and freedoms of the internal market***. That occurs where traders operating in one Member State, ***in exceptional situations, unjustly*** block or limit the access to their online interfaces, such as websites and apps, of ***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 ***restrictive*** general conditions of access to their goods and services with respect to such ***consumers*** from other Member States, both online and offline. ***This practice undermines the core purpose of the internal market, lowers consumers’ options and the level of competition.***

(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 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 **a truly integrated internal market and its fostering**. 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 4**

##### **Proposal for a regulation Recital 3**

(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**

(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 **country of origin** 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 **country of origin**

*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 5

### Proposal for a regulation Recital 3 a (new)

*Text proposed by the Commission*

or place of *residence may* arise as a consequence of actions by traders established in third countries, which fall outside the scope of that Directive, ***but which need to be tackled.***

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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*

***(3 a) Even though the present Regulation deals specifically with geo-blocking, a particular focus should be laid on increasing consumer confidence in e-commerce, providing more choice and access to lower-priced goods and services.***

## Amendment 6

### Proposal for a regulation Recital 4

*Text proposed by the Commission*

(4) For the purposes of ensuring the good functioning of the internal market, the targeted measures set out in this Regulation, which provide for a clear, uniform and effective set of rules on a selected number of issues, are therefore required.

*Amendment*

(4) For the purposes of ensuring the good functioning of the internal market ***and guaranteeing the free movement of people, goods and services without discrimination based on country of origin or place of residence***, the targeted measures set out in this Regulation, which provide for a clear, uniform and effective set of rules on a selected number of issues, are therefore required. ***These measures should maintain a balance between consumer protection and economic and contractual freedom for traders.***

## Amendment 7

### 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 ***i*** ***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 ***consumer's*** payment instrument has been issued.

##### *Amendment*

(5) This Regulation aims at preventing discrimination based on customers' ***place of origin or*** place of residence, in cross-border commercial transactions between traders and ***consumers*** relating to the sales of goods and the provision of ***intangible goods and*** services within the Union. It seeks to ***prevent*** direct as well as indirect discrimination. ***Indirect discrimination should be understood to mean the application of distinguishing criteria other than the consumer's country of origin or place of residence, which lead either in a determined manner or statistically to the same result as the direct application of those same criteria. It also seeks to cover*** 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' country of origin***, 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 ***consumers***, 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 ***consumer's*** payment instrument has been issued. ***This Regulation should therefore prohibit the unjustified blocking of access to websites and other online undertakings, and the rerouting of consumers from one country version to another, discrimination against consumers in specific cases of the sale of goods and services and the circumventing of that prohibition on discrimination in passive sales***

*agreements.*

## Amendment 8

### 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 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.

#### *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 ***copyright-protected works and intangible goods***, 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 rights or has acquired the licence to use such content for all relevant territories.*** Audio-visual ***works, including cinematographic works, and 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 ***pending a comprehensive review of the legislation.*** Access to retail financial services, including payment services, should therefore also be excluded. ***However, the Commission should nevertheless review possibilities to include them in the scope of the Regulation,*** notwithstanding the provisions of this Regulation regarding non-discrimination in payments.



## Amendment 9

### 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

*Amendment*

(7) Discrimination **occurs** in relation to services in the field of transport, in particular with respect to the sales of tickets for the transport of passengers, **even though** 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. 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, **services in the field of transport should either, after review of this Regulation, be included in the scope of this Regulation, or prohibition of discriminations covering all discriminatory practices should be effectively enforced through specific Union legislation in that area.**

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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 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).

passengers in bus and coach transport 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 10

### Proposal for a regulation

#### Recital 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(7 a) This Regulation should also cover the sale of bundled services. However, a trader should be under no obligation to sell the bundled services if he or she doesn't have a legal right to provide part of one or several services that are included in that bundle.***

## Amendment 11

### 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<sup>22</sup>, ***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

(9) ***This Regulation should be without prejudice to Regulation (EC) No 593/2008 of the European Parliament and of the Council<sup>22</sup>, by which in cases where a professional that pursues his or her commercial or professional activities or by any means actively directs or declares his or her activities to a country or to several countries where the consumer has his or her habitual residence, the choice of law applicable to contracts between a consumer and a professional may not have the result of depriving the consumer of the protection afforded to him 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<sup>23</sup>, in matters related to a contract between a consumer and a professional who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, a consumer may bring proceedings against the other party in the courts of the Member State where he is domiciled and proceedings may be brought against the consumer only in those courts.

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<sup>22</sup> 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).

<sup>23</sup> 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).

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<sup>23</sup>, in matters related to a contract between a consumer and a professional who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, a consumer may bring proceedings against the other party in the courts of the Member State where he is domiciled and proceedings may be brought against the consumer only in those courts.

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<sup>22</sup> 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).

<sup>23</sup> 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).

## Amendment 12

### Proposal for a regulation

#### Recital 10

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

(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

##### *Amendment*

(10) This Regulation should **be without prejudice to** Union law concerning judicial cooperation in civil matters, notably the provisions on the law applicable to contractual obligations and on **court** jurisdiction set out in Regulations (EC) No 593/2008 of the European Parliament and

Council<sup>24</sup> and (EU) 1215/2012 of the European Parliament and of the Council<sup>25</sup>, 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 State for the purpose of *such application*.

of the Council<sup>24</sup> and (EU) 1215/2012 of the European Parliament and of the Council<sup>25</sup>, including the application of those acts and provisions in individual cases. In particular, ***legal clarity is necessary regarding the meaning of “directing an activity” and the mere fact that a trader acts in compliance with the provisions of this Regulation should not be construed as implying that he directs his activities to the consumer's Member State, within the meaning of Article 6(1)(b) of Regulation (EC) No 593/2008, and of Article 17(1)(c) of Regulation (EU) 1215/2012, in accordance with the case law of the Court of Justice of the European Union. The mere fact that the trader does not block/limit access to its online interface for consumers from another Member State or does not apply different general conditions of access in the cases laid down in this Regulation or does not apply different conditions for payment transactions in the payment schedule should not be considered as directing activities to the consumer's Member State. An intention to direct an activity to a consumer's Member State cannot be considered to have been expressed solely where the trader is complying with the legal obligations set out in this Regulation. Where a trader directs his activities to a consumer's Member State, even when such commercial targeting is not explicitly mentioned by the trader's online interface, consumers should however not lose the benefit from Regulation (EC) No 593/2008 and Regulation (EU) No 1215/2012, which should remain applicable for the sake of legal certainty.***

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<sup>24</sup> 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).

<sup>25</sup> Regulation (EU) No 1215/2012 of the

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<sup>24</sup> 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).

<sup>25</sup> 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).

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).

### **Amendment 13**

#### **Proposal for a regulation Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) In situations in which a trader nevertheless provides access for consumers to his or her online interface, without applying different general conditions of access when selling goods or providing services, and in which accepting payment instruments issued in another Member State does not target the Member State where the consumer has his or her habitual residence, the applicable law should be that of the seller.***

### **Amendment 14**

#### **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

(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.

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 **consumer**. 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.

## Amendment 15

### 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*

***deleted***

## Amendment 16

### Proposal for a regulation

#### Recital 13

*Text proposed by the Commission*

(13) The effects for **customers** and on the internal market of discriminatory treatment in connection to commercial transactions relating to the sales of goods

*Amendment*

(13) The effects for **consumers** and on the internal market of discriminatory treatment in connection to commercial transactions relating to the sales of goods

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

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.

## Amendment 17

### 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*

(14) In order to increase the possibility for **consumers** 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 **consumers** from having full and equal access to online interfaces on the basis of their **country of origin or** place of residence. **Access to online interfaces in the form of a mobile application should not be blocked in any possible way for consumers if they prefer to access their chosen online interface through such means and a trader offers such an option in a Member State.** Technological measures **that prevent such access** can encompass, in particular, any technologies used to determine the physical location of the **consumer**, including the IP address **used when accessing an online interface**, 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 *consumers*.

## Amendment 18

### 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 the *customer* at all times.

*Amendment*

(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 his or her explicit consent should be prohibited. All versions of the online interface should remain easily accessible to the *consumer* at all times.

## Amendment 19

### Proposal for a regulation Recital 16

*Text proposed by the Commission*

(16) In certain cases, blocking, limiting of access or redirection without the *customer's* consent to an alternative version of an online interface for reasons related to the *customer's* nationality, place 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

*Amendment*

(16) In certain cases, blocking, limiting of access or redirection without the *consumer's* consent to an alternative version of an online interface for reasons related to the ***consumer's country of origin or*** place or residence ***could be justified only if it is necessary*** to ensure compliance with a legal requirement in Union law or in the laws of ***a*** Member *State* in accordance with Union law ***with which the trader must comply when carrying on commercial activities in the Member State concerned***. Such laws ***might*** limit *consumers'* access to certain goods or services, for instance by prohibiting the display of specific content in ***a*** certain Member *State*. Traders should not be prevented from complying with such requirements and thus ***should*** be able to block ***or*** limit the access or redirect certain



that *is* necessary for that reason.

*consumers or consumers* in certain territories to an online interface, insofar as that *may be* necessary for that reason. ***In this regard, a consumer should be notified on an online interface about the purpose of blocking, limiting or redirection to an alternative version of an online interface.***

## Amendment 20

### 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 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.***

##### *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, ***accept certain financial transactions that are officially stated by a trader*** or to provide services, for reasons related to the ***consumers' country of origin*** or place of ***residence*** 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 have full and equal access to any of the different goods or services offered irrespective of their ***country of origin*** or place of ***residence***. Where necessary, traders should therefore take measures to ensure compliance with that prohibition of discrimination if otherwise the ***consumers*** concerned would be precluded from having such full and equal access.

## Amendment 21

### 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 22

### 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 cloud services, data warehousing services, website hosting and the provision of

##### *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 price and conditions relating to the delivery of the goods, as similar **consumers** who are residents of the Member State of the trader. That may mean that a foreign **consumer** 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, **the trader has no obligation to cover any additional costs of the cross-border delivery.** **Furthermore,** there is no need to register for value added tax ("VAT") in the Member State of the **consumer**, nor arrange for the cross-border delivery of goods.

##### *Amendment*

(19) The second situation is where the trader provides electronically supplied services, other than **audio-visual** 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 **social networking services**, cloud services, data warehousing services,

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.

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.

## Amendment 23

### Proposal for a regulation Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

***(19a) Where a trader electronically provides non-audio-visual copyright-protected works or services which are not covered by Directive 2010/13/EU, including e-books, software, computer games and music, in respect of which the trader has the rights or has acquired the licence to use such content for all relevant territories, he or she should likewise be prevented from discriminating on the basis of the customer's country of origin or place of residence.***

## Amendment 24

### 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 general conditions

(20) Finally, in the situation where the trader provides services and those services are received by the **consumer** in the premises of or at a location chosen by the trader and different from the Member State of which the **consumer** is a national or in which the **consumer** has his or her place of residence, the application of different general conditions of access for reasons

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.

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 25

### 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) No 1215/2012, where a trader does not pursue his activities in the Member State of the consumer or does not ***actively*** direct his activities there, or where the ***consumer*** 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, ***inter alia by the use of language – possibly, depending on the language, in combination with other criteria –, or by reference to currency or through prominence in local search engine results, manifesting*** his or her intention to establish commercial relations with consumers from that Member State, ***he or she should be*** able to take account of any such costs. ***The prohibition of discrimination under this Regulation should however not be understood as an obligation to deliver goods cross-border to another Member State where the trader***

*would not otherwise offer the possibility of such delivery to its consumers, nor as an obligation to take back goods in another Member State or bear additional costs in this regard, where the trader would otherwise not be under such an obligation.*

## **Amendment 26**

### **Proposal for a regulation Recital 22**

*Text proposed by the Commission*

(22) Traders falling under the special scheme provided in Chapter 1 of Title XII of Council Directive 2006/112/EC<sup>27</sup> 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 time as such a scheme is applicable.

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<sup>27</sup> 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)

*Amendment*

(22) Traders falling under the special scheme provided in Chapter 1 of Title XII of Council Directive 2006/112/EC<sup>27</sup> 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 ***country of residence*** or place of ***residence*** of the ***consumer*** would imply a requirement to register in order to account for VAT of other Member States and might entail additional costs, which would be a disproportionate burden, considering the size and characteristics of the traders concerned. Therefore, those traders should be exempted from that prohibition for such time as such a scheme is applicable.

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<sup>27</sup> 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)

## **Amendment 27**

### **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 those situations, traders may in some cases be prevented from selling goods or providing services to certain *consumers* or to *consumers* in certain territories, 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. *In addition, laws of Member States may require that electronically supplied services and electronically supplied publications should be able to benefit from the same preferential VAT rate treatment as publications on any means of physical support, in line with Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals.* Traders should not be prevented from complying with such laws in as far as necessary *and in as far as the Union's principles and legislation, and the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, are complied with.*

## Amendment 28

### Proposal for a regulation Recital 26

#### *Text proposed by the Commission*

(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

#### *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 *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. 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.

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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**

### **Proposal for a regulation Recital 27**

#### *Text proposed by the Commission*

(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.

## **Amendment 30**

### **Proposal for a regulation Recital 28**

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.

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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*

(27) Member States should designate one or more ***responsible*** bodies ***with necessary powers to take*** effective action to monitor and to ***ensure*** 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.

*Text proposed by the Commission*

(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.

*Amendment*

(28) Consumers should be in the position to receive assistance from responsible **bodies** facilitating the resolution of conflicts with traders, arising from the application of this Regulation, including by way of a uniform complaint form.

**Amendment 31**

**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*

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate **on an analysis of situations in which differences in treatment cannot be justified under Directive 2006/123/EC**, in particular, on the possible extension of the **application of** Article 4(1)(b) to electronically supplied services **and intangible goods**, the main feature of which is the provision of access to and use of **audio-visual** copyright protected works **and services** or other protected subject matter, **in respect of which** the trader has the rights **or has acquired the licences to use such content** for **all** relevant territories, **pending a comprehensive review of the legislation affecting those services, with a view to its possible extension to other cases, as well as the development of consumer prices and purchasing power in the Single Market following this Regulation. It should moreover take into account the legal and technological developments in Member States with regard to the reform of copyright, the audiovisual services' sector and the provision of cross-border portability of online content services for subscribers who are temporarily not**



*present in their Member State of residence. This first evaluation should also consider the possible extension of the scope of this Regulation to financial services, transport services or healthcare services. Audio-visual service providers should in future 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.*

## Amendment 32

### Proposal for a regulation Recital 30

*Text proposed by the Commission*

(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<sup>30</sup> 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.

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<sup>30</sup> 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).

*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 competent authorities provided for in Regulation (EC) No 2006/2004 of the European Parliament and of the Council<sup>30</sup> 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, Regulation (EC) No 2006/2004 should be amended accordingly.

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<sup>30</sup> 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).

## Amendment 33

## Proposal for a regulation

### Recital 33

*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 34

## 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

*Amendment*

(33) In order to achieve the objective of effectively addressing direct and indirect discrimination based on the ***country of origin or place of residence 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 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 ***consumers*** to fully benefit from those rules.

*Amendment*

(34) Since the objective of this Regulation, namely the prevention of direct and indirect discrimination based on ***country of origin or place of residence 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

necessary in order to achieve that objective.

achieve that objective.

## Amendment 35

### Proposal for a regulation

#### Recital 35

*Text proposed by the Commission*

(35) This Regulation respects fundamental rights and observes the principle recognised in the Charter of Fundamental Rights of the European Union. In particular this Regulation seeks to ensure full respect of Articles 16 and 17 thereof,

*Amendment*

(35) This Regulation respects fundamental rights and observes the principle recognised in the Charter of Fundamental Rights of the European Union. In particular this Regulation seeks to ensure full respect of Articles **11**, 16 and 17 thereof,

## Amendment 36

### Proposal for a regulation

#### Article 1 – title

*Text proposed by the Commission*

**Objective** and scope

*Amendment*

**Subject matter** and scope

## Amendment 37

### Proposal for a regulation

#### Article 1 – paragraph 1

*Text proposed by the Commission*

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***.

*Amendment*

1. ***The purpose of*** this Regulation ***is*** to contribute to the proper functioning of the internal market ***and achieve a high level of consumer protection*** by preventing ***geo-blocking*** based, directly or indirectly, on the ***country of origin or*** place of residence of ***consumers***. ***This Regulation defines situations in which differences in conditions of access cannot be justified by objective criteria under the provisions of Article 20(2) of Directive 2006/123/EC.***

*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. Article 20(2) of Directive 2006/123/EC continues to fully apply to situations that are not covered by this Regulation and that fall within the scope of Directive 2006/123/EC.*

## Amendment 38

### 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 ***or*** provides services, ***including non-audio-visual copyright-protected works and services***, or seeks to do so, in a Member State other than the Member State in which the *consumer* has the place of residence;

## Amendment 39

### 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 a national of another Member State;

*Amendment*

(b) where the trader sells goods ***or*** provides services, ***including non-audio-visual copyright-protected works and services***, or seeks to do so, in the same Member State as the one in which the *consumer* has the place of residence, but the *consumer* is a national of another Member State;

## Amendment 40

### 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, **including non-audio-visual copyright-protected works and services**, or seeks to do so, in a Member State in which the **consumer** is temporarily located without residing in that Member State.

## Amendment 41

### Proposal for a regulation

#### Article 1 – paragraph 5

*Text proposed by the Commission*

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.

*Amendment*

5. This Regulation shall **be without prejudice to** acts of Union law concerning judicial cooperation in civil matters. **Simple** compliance with this Regulation shall not be construed as implying that a trader directs his or her activities to the Member State where the consumer has the habitual residence or domicile within the meaning of point (b) of Article 6(1) of Regulation (EC) No 593/2008, and point (c) of Article 17(1) of Regulation (EU) 1215/2012. **In particular, when a trader, acting in compliance with Articles 3, 4 and 5, does not block or limit consumers' access to its online interface, does not redirect them to a version of its online interface other than that which the consumer in question initially sought to access, regardless of their country of origin or place of residence, and does not apply different general access conditions in situations covered by this Regulation, that operator cannot be said for those reasons alone to be actively directing its activities towards the Member State where**

*the consumer has the habitual residence or domicile. This shall however not apply when the existence of other additional elements, which go beyond simple compliance with the mandatory provisions, indicate that the trader directs his or her commercial or professional activities to such a Member State.*

## Amendment 42

### Proposal for a regulation

#### Article 2 – paragraph 2 – point c

*Text proposed by the Commission*

*(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;*

*Amendment*

*deleted*

## Amendment 43

### Proposal for a regulation

#### Article 2 – paragraph 2 – point d

*Text proposed by the Commission*

(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*;

*Amendment*

(d) 'general conditions of access' means all terms, conditions and other information, including sale prices, regulating the access of *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*;

## Amendment 44

**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.

**Amendment 45**

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

*Text proposed by the Commission*

(f) 'online interface' means any software, including a website and 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;

*Amendment*

(f) 'online interface' means any software, including a website and 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;

**Amendment 46**

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

*Text proposed by the Commission*

*Amendment*

***(h a) 'geo-blocking' means unjustified access limitation to certain online interfaces through the use of technological measures or otherwise for geographical reasons.***

**Amendment 47**

**Proposal for a regulation**

## Article 3 – paragraph 1

*Text proposed by the Commission*

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**.

*Amendment*

1. Traders shall not, through the use of technological measures or otherwise, block or limit **consumers'** access to their online interface for reasons related to the **place of origin** or place of **residence** of the **consumer**.

## Amendment 48

### Proposal for a regulation

#### Article 3 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

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.

*Amendment*

Traders shall not, for reasons related to the **country of origin or place of residence** of the **consumer**, redirect **consumers** to a version of their online interface that is different from the online interface which the **consumer** originally sought to access, by virtue of its layout, use of language or other characteristics that make it specific to **consumers** with a particular **country of origin or place of residence**, unless the **consumer has given** his or her explicit consent prior to such redirection, **which the consumer originally sought to access**.

## Amendment 49

### 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 **consumer's** explicit consent, the version of the online interface **which the consumer initially sought to access**, shall remain easily accessible for that **consumer**.

## Amendment 50



## Proposal for a regulation

### Article 3 – paragraph 3

*Text proposed by the Commission*

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.

*Amendment*

3. The prohibitions set out in paragraphs 1 and 2 shall not apply where the blocking **or** limitation of **clients'** access **to the trader's online interface** or redirection with respect to certain **consumers** or to **consumers** 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, **to which the trader's activities are subject**.

## Amendment 51

### 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 **consumers** to an online interface or redirects **consumers** to a different version of the online interface in compliance with paragraph 3, the trader shall provide a clear justification **and explanation to the consumer**. That justification shall be given in the language of the online interface that the **consumer** originally sought to access.

## Amendment 52

### Proposal for a regulation

#### Article 4 – paragraph 1 – introductory part

*Text proposed by the Commission*

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**

*Amendment*

1. Traders shall not apply different general conditions of access to their goods or services, for reasons related to the **country of origin** or place of **residence** of

*following situations:*

the *consumer, where:*

### Amendment 53

#### Proposal for a regulation

#### Article 4 – paragraph 1 – point a

*Text proposed by the Commission*

(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;

*Amendment*

(a) the trader sells goods and those goods are not delivered cross-border to the Member State of the *consumer* by the trader or on his or her behalf, ***but are collected at a location agreed between the trader and the consumer in which the trader operates;***

### Amendment 54

#### 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 ***sale in non-material form or the*** provision of access to and use of copyright protected works or other protected subject matter;

### Amendment 55

#### Proposal for a regulation

#### Article 4 – paragraph 1 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(b a) where the trader provides electronically supplied non-audio-visual works or 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 rights or has***

*acquired the licence to use such content for all relevant territories;*

## **Amendment 56**

### **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) the trader provides services, other than those covered by point (b), and those services are supplied to the *consumer* 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 *consumer* is a national or in which the *consumer* has the place of residence.

## **Amendment 57**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

*1 a. The prohibition set out in paragraph 1 shall not prevent traders from offering general conditions of access, including sale prices, which differ from one Member State to another or which are offered to consumers in a specific territory or to specific groups of consumers.*

## **Amendment 58**

### **Proposal for a regulation**

#### **Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2 a. Traders shall have the possibility not to deliver goods or provide services across borders in cases where the delivery*

*or the provision creates additional costs and/or requires additional arrangements on the trader's behalf.*

## **Amendment 59**

### **Proposal for a regulation**

#### **Article 4 – paragraph 3 –subparagraph 1**

*Text proposed by the Commission*

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.

*Amendment*

The prohibition set out in paragraph 1 shall apply **taking into account** specific **provisions** laid down in Union law or in the laws of Member States in accordance with Union law **by preventing** the trader from selling the goods or providing the services to certain **consumers** or to **consumers** in certain territories.

## **Amendment 60**

### **Proposal for a regulation**

#### **Article 4 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

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.

*Amendment*

With respect to sales of books, the prohibition set out in paragraph 1 shall **be without prejudice to specific legislation regarding pricing in** Member States, in accordance with Union law.

## **Amendment 61**

### **Proposal for a regulation**

#### **Article 4 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 4 a*

***This Regulation shall not affect the rules***

***applicable in the field of copyright and the neighbouring rights.***

*Justification*

*Access to copyright protected works or other protected subject matter and the use of such works or subject matter should continue to fall outside the scope of this regulation. This will rule out overlap with other items of EU legislation.*

**Amendment 62**

**Proposal for a regulation**

**Article 5 – paragraph 1 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

1. Traders shall not, for reasons related to the ***place of origin*** or place of ***residence*** 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 of payment for any sales of goods or provision of services, where:

**Amendment 63**

**Proposal for a regulation**

**Article 6 – paragraph 1**

*Text proposed by the Commission*

***Agreements*** imposing on traders obligations, in respect of passive sales, to act in violation of this Regulation shall be automatically void.

*Amendment*

***Provisions*** 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.

**Amendment 64**

**Proposal for a regulation**

**Article 7 – paragraph 2**

*Text proposed by the Commission*

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.

**Amendment 65**

**Proposal for a regulation**

**Article 7 – paragraph 2 a (new)**

*Text proposed by the Commission*

**Amendment 66**

**Proposal for a regulation**

**Article 9 – paragraph 1**

*Text proposed by the Commission*

1. By [date: two years after the entry into force of this Regulation] **and** every **five** years thereafter, the Commission shall **report on the evaluation** of this Regulation to the European Parliament, the Council and the European Economic and Social Committee. That report shall, **where necessary**, be accompanied by a proposal **for an amendment** of this Regulation, **in light of legal, technical and economic developments**.

*Amendment*

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

*Amendment*

**2 a. The sanctions referred to in paragraph 2 should be communicated to the Commission and made publically available on the Commission's website.**

*Amendment*

1. By [date: two years after the entry into force of this Regulation], **as required thereafter and at the latest every four** years thereafter, the Commission shall **assess the application** of this Regulation **in light of legal, technical and economic developments, and shall submit a respective report** to the European Parliament, the Council and the European Economic and Social Committee. That report shall, **if appropriate**, be accompanied by a **legislative proposal to review the current Regulation**.

**The report referred to in the first paragraph shall include an assessment on possibly extending the scope** of this

Regulation, *notably on extending 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 as well as to other sectors, such as music, e-books, games and/or software.*

*Furthermore, the report shall pay special attention to potential economic effects on SMEs and start-ups, the effectiveness of national enforcement measures referred to in Article 7 of this Regulation as well as focus on the use and protection of personal data.*

## Amendment 67

### Proposal for a regulation Article 9 – paragraph 2

*Text proposed by the Commission*

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.

*Amendment*

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 financial, transport, electronic communication, healthcare and audio-visual services*, provided that the trader has the rights *or has acquired the license to use electronically supplied audio-visual works, intangible goods or services*, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter for *all* relevant territories.

## Amendment 68

### 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***



## 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	JURI 9.6.2016	
<b>Associated committees - date announced in plenary</b>	19.1.2017	
<b>Rapporteur</b> Date appointed	Lidia Joanna Geringer de Oedenberg 12.9.2016	
<b>Discussed in committee</b>	29.11.2016	31.1.2017
<b>Date adopted</b>	23.3.2017	
<b>Result of final vote</b>	+: 14 -: 3 0: 4	
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sajjad Karim, Sylvia-Yvonne Kaufmann, António Marinho e Pinto, Jiří Maštálka, Julia Reda, Pavel Svoboda, Tadeusz Zwiefka	
<b>Substitutes present for the final vote</b>	Isabella Adinolfi, Daniel Buda, Jytte Guteland, Angelika Niebler, Virginie Rozière, Rainer Wieland	
<b>Substitutes under Rule 200(2) present for the final vote</b>	Eugen Freund, Maria Noichl	

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

14	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
EFDD	Joëlle Bergeron
GUE/NGL Group	Kostas Chrysogonos, Jiří Maštálka
PPE	Pavel Svoboda
S&D	Eugen Freund, Lidia Joanna Geringer de Oedenberg, Jytte Guteland, Mary Honeyball, Sylvia-Yvonne Kaufmann, Maria Noichl
Verts/ALE Group	Max Andersson, Julia Reda

3	-
EFDD	Isabella Adinolfi
ENF	Marie-Christine Boutonnet
PPE	Angelika Niebler

4	0
ECR	Sajjad Karim
PPE	Daniel Buda, Rainer Wieland, Tadeusz Zwiefka

Key to symbols:

+ : in favour

- : against

0 : abstention