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Subject: Proposal for a Regulation of the European Parliament and of the Council 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 Regulation (EC) No 2006/2004 and Directive 2009/22/EC
- General approach

Delegations will find attached the compromise text to be submitted to the Competitiveness Council of 28 November 2016.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C [...], [...], p. [...].

- (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.

- (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.

- (3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council², Member States are to ensure that service providers established in the Union do not treat recipients of services differently on the basis of their nationality or place of residence. However, that provision has not been fully effective in combatting discrimination and it has not sufficiently reduced legal uncertainty, particularly because of the possibility to justify the differences in treatment for which it allows and the corresponding difficulties in enforcing it in practice. Moreover, geo-blocking and other forms of discrimination based on nationality, place of residence or place of establishment can also arise as a consequence of actions by traders established in third countries, which fall outside the scope of that Directive.
- (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.
- (5) This Regulation aims at preventing discrimination based on customers' nationality, place of residence or place of establishment, including geo-blocking, in cross-border commercial transactions between traders and customers relating to the sales of goods and the provision of services within the Union. It seeks to address direct as well as indirect discrimination, thus also covering unjustified differences of treatment on the basis of other distinguishing criteria which lead to the same result as the application of criteria directly based on customers' nationality, place of residence or place of establishment. Such other criteria can be applied, in particular, on the basis of information indicating the physical location of customers, such as the IP address used when accessing an online interface, the address submitted for the delivery of goods, the choice language made or the Member State where the customer's payment instrument has been issued.

² 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).

(5a) The rights and obligations provided for in this Regulation should not apply to situations which are purely internal to a Member State, i.e. where all the relevant elements of the transaction are confined to a single Member State, in particular the nationality, the place of residence or the place of establishment of the customer or the trader, place of execution, payment means used in the transaction or the offer as well as the use of an online interface.

(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~~ **principle purpose** 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.

(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 Council³, Regulation (EU) No 1177/2010 of the European Parliament and of the Council⁴ and Regulation (EU) No 181/2011 of the European Parliament and of the Council⁵ 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 Council⁶ 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.

(7a) This Regulation should also cover the sale of packaged services, i.e. the sale of a combination of two or more different services or a combination of the sale of goods and the provision of a service or services. Where such package contains one or more services which individually fall outside the scope of this Regulation, for the purposes of determining whether such package as a whole remains within the scope of this Regulation, this shall be determined by the principal purpose and objective of the package. However, if traders do not have the legal right to provide a part of such package outside of a specific territory, they should not be under an obligation to provide such package as a whole across the border to the Member State of the customer, if it would be necessary for them to enter into new contracts or modify their existing contracts with third parties. At the same time those parts of such package, which can be provided across the border to the Member State of the customer without additional costs to traders, should be provided.

³ 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).

⁴ 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).

⁵ 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).

⁶ 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).

- (8) This Regulation should be without prejudice to the rules applicable in the field of taxation, given that the Treaty on the Functioning of the European Union (TFEU) provides specific base for action at Union level as regards taxation matters.
- (9) Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council⁷, the choice of law applicable to contracts between a consumer and a professional who pursues his or her commercial or professional activities in the country where the consumer has his or her habitual residence or, by any means, directs such activities to that country or to several countries including that country, may not have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law of the country where the consumer has his or her habitual residence. Pursuant to Regulation (EU) 1215/2012 of the European Parliament and of the Council⁸, 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.

⁷ 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).

⁸ 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).

(10) This Regulation should ~~not affect~~ **be without prejudice to** acts of 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 of the Council⁹ and (EU) 1215/2012 of the European Parliament and of the Council¹⁰, ~~including the application of those acts and provisions in individual cases.~~ In particular, the mere fact that a trader ~~acts in accordance~~ **complies** 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~~ **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. Therefore, the mere fact that the trader does not block or limit access to his or her online interface for customers 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 within the range of payment means he accepts, should not be considered, on its own, as directing the traders activities into the Member State of the consumer, for the purpose of the determination of the applicable law and jurisdiction.**

⁹ 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).

¹⁰ 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).

- (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.
- (12) **When purchasing goods or services as end-users under general conditions of access, consumers and undertakings, in particular microenterprises, small and medium enterprises, are often in a similar position. Hence, both consumers and undertakings should be safeguarded protected from against** 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 **subsequent resale, transformation, processing or renting** because it would affect widely used distribution schemes between undertakings in a business to business context, **often negotiated bilaterally and directly linked to the commercial strategies at downstream and upstream level**, such as selective and exclusive distribution, which generally allow for manufacturers to select their retailers, subject to compliance with the rules on competition.

- (13) The effects for customers 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.
- (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 ~~or~~, 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.
- (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. **Traders should not be under the obligation to require the customer's explicit consent each time the same customer visits the same online interface. Once the customer's explicit consent has been given it should be deemed valid for all subsequent visits of the same customer to the same online interface.** All versions of the online interface should remain easily accessible to the customer at all times.

- (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 **specific** legal requirement in Union law or in the laws of Member States in accordance with Union law **to which the trader is subject to as a consequence of operating in that Member State**. Such laws can limit customers' access to certain goods or services, for instance by prohibiting the display of specific content in certain Member States. Traders should not be prevented from complying with such requirements and thus be able to block, limit the access or redirect certain customers or customers in certain territories to an online interface, insofar as that is necessary for that reason. **Furthermore, the application of this Regulation should not prevent Member States from applying their fundamental rules and principles relating to the freedom of press and freedom of expression.**
- (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.~~

- (18) The first of those situations is where the trader sells goods and **the goods are delivered to a Member State to which the trader offers delivery in his general conditions of access or are collected at a location agreed upon between the trader and the customer in a Member State in which the trader offers such option in his general conditions of access** ~~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 **in which the goods are delivered or in which the goods are collected** ~~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.
- (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~~ **or** use of copyright protected works or other protected subject matter, such as cloud services, data warehousing services, website hosting and the provision of firewalls, **or selling of copyright protected works and other protected subject matter in an intangible form, such as e-books or online music**. 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 282/2011¹¹.

¹¹ Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

- (20) Finally, in the situation where the trader provides services and those services are received by the customer in ~~the premises of or a~~ **physical location, such as the premises of the trader or other specific location where the trader offer the provision of his or her services** chosen by the trader and different from the Member State of which the customer is a national or in which the customer has his or her place of residence or place of establishment, the application of different general conditions of access for reasons related to such criteria should not be justified either **within the territory of a Member State where the trader operates, the application of different general conditions of access for reasons related to the nationality or the place of residence or place of establishment of the customer, should not be justified either**. Those situations concern, as the case may be, the provision of services, **different from electronically supplied 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.
- (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.

(21a) The prohibition to discriminate customers applicable in the above situations pursuant to this Regulation should not be understood as precluding traders from offering goods or services in 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, as long as the traders treat their customers in a non-discriminatory manner, regardless of their nationality, place of residence or place of establishment, where a customer wishes to benefit from such offers and terms and conditions. Neither should that prohibition be understood as precluding the freedom of traders to offer, on a non-discriminatory basis, different conditions, including different prices, in different points of sale, such as shops and websites or make available specific offers only to a specific territory in a Member State.

(21b) Furthermore, that prohibition should not be understood as affecting the application of any territorial or other limitation on after sale customer assistance or after-sales services offered by the trader to the customer. Nor should it be understood as entailing an obligation to cover any additional costs of postage and transport beyond the contractually agreed place of delivery where the consumer picked up the good, where pursuant to Directive 1999/44/EC the trader is to provide for, a free of charge, repair or replacement of a defective good or where the trader is to bear the cost of returning such a good following the exercise of the consumer's right of withdrawal pursuant to Directive 2011/83/EU. This Regulation should therefore not be understood as providing for 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 customers, nor for an obligation to accept 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.

- (22) Traders falling under the special scheme provided in Chapter 1 of Title XII of Council Directive 2006/112/EC are not required to pay VAT **in the Member State where they are established**. 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.
- (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.

(24) Under Union law, traders are in principle free to decide which means of payment they wish to accept, including payment brands. **In accordance with the rules of Regulation (EU) 2015/751 and Directive (EU) 2015/2366, retailers accepting a card-based payment instrument of a specific brand and category are not under an obligation to accept card-based payment instruments of the same category but of a different brand. Likewise retailers accepting a debit card of a given brand are under no obligation to accept credit card of that brand, or when accepting consumer credit cards of a given brand also to accept commercial credit cards of the same brand. Equally, a trader accepting credit transfers or direct debits is under no obligation to accept the payment, if this requires entering into a new or modified contract with a payment service provider.** However, once this choice has been made, in view of the existing legal framework for payment services, there are no reasons for traders to discriminate customers within the Union by refusing certain commercial transactions, or by otherwise applying certain different conditions of payment in respect of those transactions, for reasons related to the nationality, place of residence or place of establishment of the customer. In this particular context, such unjustified unequal treatment for reasons related to the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union should be expressly prohibited as well. It should be further recalled that Regulation (EU) No 260/2012 already prohibits all payees, including traders, from requiring bank accounts to be located in a certain Member State for a payment in euro to be accepted. **The trader should remain free to request charges for the use of a payment instrument. However, this right is subject to the restrictions introduced by Article 62(5) of the Directive (EU) 2015/2366.**

(25) Directive 2015/2366/EU of the European Parliament and of the Council¹² introduced strict security requirements for the initiation and processing of electronic payments, which reduced the risk of fraud for all new and more traditional means of payment, especially online payments. Payment service providers are obliged to apply so-called strong customer authentication, an authentication process that validates the identity of the user of a payment service or of the payment transaction. For remote transactions, such as online payments, the security requirements go even further, requiring a dynamic link to the amount of the transaction and the account of the payee, to further protect the user by minimising the risks in case of mistakes or fraudulent attacks. As a result of these provisions, the risk of payment fraud in national and cross-border purchases is brought to an equal level and should not be used as an argument to refuse or discriminate any commercial transactions within the Union. **However, in situations where there are no other means available to the trader to reduce the risk of customers' default, including in particular difficulties related to assessing of the creditworthiness of the customer, traders should be allowed to withhold the goods or the service until they receive a confirmation that the payment transaction was properly initiated. Different treatment, however, can be based only on objective and well justified reasons.**

¹² Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35–127).

- (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^[1] 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. **However, in exceptional cases, those agreements can be considered in compliance with Article 101. In those, well justified cases, traders will not act in violation of this Regulation when they do not engage in passive sales. The application of this Regulation should not affect those agreements.** ~~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 also not affect agreements restricting active sales within the meaning of Regulation (EU) No 330/2010.**
- (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. **Those bodies, which could include courts or administrative authorities, should have the necessary powers to order the trader to comply with this Regulation.** Member States should also ensure that effective, proportionate and dissuasive ~~penalties~~ **measures** can be ~~imposed on~~ **taken against** traders in the event of any breach of this Regulation.

^[1] 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).

- (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.~~
- (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~~ or use of copyright protected works or other protected subject matter, **or the selling of copyright protected works and other protected subject matter in an intangible form**, provided that the trader has the requisite rights for the relevant territories.
- (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 Council¹³ 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.
- (31) In order to allow for the bringing of actions for injunctions aimed at the protection of the collective interests of consumers with respect to acts contrary to this Regulation in accordance with Directive 2009/22/EC of the European Parliament and of the Council¹⁴, that Directive should also be amended, so as to include a reference to this Regulation in its Annex I.

¹³ 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).

¹⁴ Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30).

- (32) Traders, public authorities and other interested parties should have sufficient time to adapt to, and ensure compliance with, the provisions of this Regulation. In light of the particular characteristics of electronically supplied services, other than services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, it is appropriate to apply the prohibition of Article 4(1)(b) only from a later date with respect to the provision of those services.
- (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.
- (34) Since the objective of this Regulation, namely the prevention of direct and indirect discrimination based on nationality, place of residence or place of establishment of customers, including geo-blocking, in commercial transactions with traders within the Union, cannot be sufficiently achieved by Member States, due to the cross-border nature of the problem and the insufficient clarity of the existing legal framework, but can rather, by reason of its scale and potential effect on trade in the internal market be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

- (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,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective and scope

1. **The purpose of this Regulation seeks *is* to contribute to the proper functioning of the internal market by preventing *unjustified* discrimination based, directly or indirectly, on the nationality, place of residence or place of establishment of customers *and by defining situations where different treatment cannot be justified under Article 20(2) of Directive 2006/123/EC.***
2. This Regulation ~~applies~~ **does not apply** to the following **purely internal** situations: **where all the relevant elements of the transaction are confined within one single Member State.**
 - ~~(a) where the trader sells goods, provides services, or seeks to do so, in a Member State other than the Member State in which the customer has the place of residence or the place of establishment;~~
 - ~~(b) where the trader sells goods, provides services, or seeks to do so, in the same Member State as the one in which the customer has the place of residence or place of establishment, but the customer is a national of another Member State;~~

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

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

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

4a. This Regulation shall not affect the rules applicable in the field of copyright and neighbouring rights, notably the rules provided for in Directive 2001/29/EC.

5. This Regulation shall ~~not affect acts of~~ **be without prejudice to** 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.

In particular, where a trader acting, in accordance with Articles 3, 4 and 5 does not block or limit customers' access to his or her online interface, does not redirect customers to a version of his or her online interface that is different from the online interface to which the customer first sought access, regardless of their nationality or place of residence or place of establishment, does not apply different general conditions of access when selling goods or providing services in situations laid down in this Regulation or where the trader accepts payments instruments issued in another Member State on a non-discriminatory basis, that trader shall not be, on those grounds alone, considered as directing his or her activities to the Member State where the consumer has the habitual residence or domicile.

6. ~~Insofar as the provisions of this Regulation conflict with the provisions of Article 20(2) of Directive 2006/123/EC shall prevail~~ **continue to apply unless this Regulation sets specific obligations for traders.**

Article 2

Definitions

For the purposes of this Regulation, the definitions **of the term 'electronically supplied services'** set out in Article 7 of Implementing Regulation (EU) No 282/2011, **the definitions of the terms 'interchange fee', 'card-based payment instrument', 'payment brand', set out in** Article 2(10), (20) and (30) of Regulation (EU) 2015/751 of the European Parliament and Council and **the definitions of the terms 'payment transaction', 'payer', 'payment service provider', 'payment account', 'payment instrument', 'direct debit', 'credit transfer' and 'strong customer authentication' set out in** Article 4(5), (8), (11), (12), (14), (23), (24) and (30) of Directive (EU) 2015/2366 shall apply.

The following definitions shall also apply **for the purposes of this Regulation:**

- (b) 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business, craft or profession;
- (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~~ **only for end use;**

- (d) 'general conditions of access' means all terms, conditions and other information, including **net** 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;
- (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;~~
- (f) 'online interface' means any software, including a website **or part of 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;
- (g) 'service' means any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 of the Treaty;
- (h) 'trader' means any natural or legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his or her name or on his or her behalf, for purposes relating to his or her trade, business, craft or profession.

Article 3

Access to online interfaces

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.
2. 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 **to** which the customer ~~originally~~ **first** 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 **of** establishment, unless the customer ~~gives~~ **has given** his or her explicit consent ~~prior~~ to such redirection.

In the event of such redirection with the customer's explicit consent, the ~~original~~ version of the online interface **to which the customer first sought access**, shall remain easily accessible for that customer.

3. The prohibitions set out in paragraphs 1 and 2 shall not apply where the blocking **or** limitation of **customers'** access **to the trader's online interface** or **the** redirection is necessary ~~with respect to certain customers or to customers in certain territories~~ 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 is subject to**.

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 ~~3~~, the trader shall provide a clear ~~justification~~ **explanation to customers**. That ~~justification~~ **explanation** shall be given in the language of the online interface that the customer ~~originally~~ **first** sought to access.

Article 4

Access to goods or services

1. Traders shall not apply different general conditions of access to their goods or services, for reasons related to the nationality, place of residence or place of establishment of the customer, in the following situations **where the customer seeks to:**
- (a) ~~where the trader sells~~ **buy** goods **from a trader** and those goods are ~~not delivered cross-border to the~~ **to a location in a** Member State to which the trader **offers delivery in his general conditions of access** or, ~~on his or her behalf~~ **are collected at a location agreed upon between the trader and the customer in a Member State in which the trader offers such option in his general conditions of access;**
 - (b) ~~where the trader provides~~ **receive** electronically supplied services **from a trader**, other than services the main feature of which is the provision of access to ~~and~~ **or** use of copyright protected works or other protected subject matter, **or the selling of copyright protected works or protected subject matter in an intangible form;**

- (c) ~~where the trader provides receive services, other than electronically supplied services those covered by point (b) from a trader and those services are supplied to the customer in the premises of the trader or in a physical location within the territory of a Member State 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.~~

1a. The prohibition set out in paragraph 1 shall not prevent traders from offering general conditions of access, including sale prices, which differ between Member States or within a Member State and which are offered to customers on a specific territory or to specific groups of customers.

2. The prohibition set out in point (b) of paragraph 1 shall not apply to traders that are exempted from VAT on the basis of the provisions of Chapter 1 of Title XII of Directive 2006/112/EC.
3. 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.

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.

Article 5

Non-discrimination for reasons related to payment

1. **Within the range of payment means, namely credit transfers, direct debits or a card-based payment instrument of a specific payment brand and category, traders accept, they** 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 **for** payment ~~for any sales of goods or provision of services, where~~ **transactions where:**
 - (a) ~~those payments are made through electronic transactions by credit transfer, direct debit or a card-based payment instrument within the same payment brand;~~
 - (b) the payee can request **identity of the payer or the validity of the use of the payment instrument is verifiable by** strong customer authentication by the payer pursuant to the Directive (EU) 2015/2366; and
 - (c) the payments **transactions** are in a currency that the payee **trader** accepts.
- 1a. Where justified by objective reasons, the prohibition set out in paragraph 1 shall not preclude trader's right to withhold the goods or the provision of the service, until the trader has received confirmation that the payment transaction has been properly initiated.**

2. The prohibition set out in paragraph 1 shall not preclude traders' possibility to request charges for the use of a card-based payment instrument for which interchanges fees are not regulated under Chapter II of Regulation (EU) 2015/751 and for those payment services to which Regulation (EU) No 260/2012 does not apply, **unless the prohibition or limitation of the right to request charges for the use of payment instruments according to Article 62(5) of Directive (EU) 2015/2366 has been introduced in the law of the Member State which the trader's operation is subject to.** Those charges shall not exceed the **direct** costs borne by the trader for the use of the payment instrument.

Article 6

Agreements on passive sales

- 1. Provisions of** agreements imposing on traders **obligations**, in respect of passive sales, **within the meaning of Regulation (EU) No 330/2010, which are not in accordance with Article 101 TFEU and with Regulation (EU) No 330/2010,** to act in violation of this Regulation shall be ~~automatically~~ **null and** void.
- 2. The prohibitions laid down in Articles 3, 4 and 5 of this Regulation shall not apply in situations where the traders are bound by an agreement requiring them to restrict their passive sales and such restrictions are in accordance with Article 101 TFEU and with Regulation (EU) No 330/2010.**

Article 7

Enforcement by ~~Member State~~ authorities

1. Each Member State shall designate a body or bodies responsible for **adequate and effective** enforcement of this Regulation. ~~Member States shall ensure that adequate and effective means exist with the body or bodies designated in order to enforce compliance with this Regulation.~~
2. Member States shall lay down the rules on the ~~penalties~~ **measures** applicable for infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The ~~penalties~~ **measures** provided for shall be effective, proportionate and dissuasive.

Article 8

Assistance to consumers

- ~~1.~~—Each Member State shall ~~confer responsibility~~ **designate a body or bodies responsible** for providing practical assistance to consumers ~~to a body or bodies~~ in case of a dispute between a consumer and a trader arising from the application of this Regulation. ~~Each Member State shall designate a body or bodies responsible for that task.~~
- ~~2.~~—The ~~bodies referred to in paragraph 1 shall offer consumers a uniform model form to file complaints to the bodies referred to in paragraph 1 and in Article 7(1). The Commission shall assist those bodies in developing this model form.~~

Article 9

Review clause

1. By [date: ~~two~~ **four** 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.
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, **or the selling of copyright protected works or protected subject matter in an intangible form**, provided that the trader has the requisite rights for the relevant territories.

Article 10

Amendments to Regulation (EC) No 2006/2004 and Directive 2009/22/EC

1. In the Annex to Regulation (EC) No 2006/2004 the following point [number] is added: "[number] [full title of this Regulation] (OJ L XX, XX.XX.Year, p. X), only when the customer is a consumer within the meaning of Article 2(3) of Regulation No XXXX/Year."
2. In Annex I to Directive 2009/22/EC the following point [number] is added: "[number] [full title of this Regulation] (OJ L XX, XX.XX.Year, p. X)."

Article 11

Final provisions

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [date: ~~six~~ **eighteen** months following the day of its publication].

~~However, point (b) of Article 4(1) shall apply from 1 July 2018.~~

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
