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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on addressing geo-blocking and other forms of discrimination based on place of residence or establishment, or nationality within the Single Market

(ext with Erelevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

The Digital Single Market Strategy¹ adopted in May 2015 and the Single Market Strategy² adopted in October 2015 announced legislative action to address unjustified geo-blocking and comprehensively fight discrimination based on nationality or place of residence or establishment (hereinafter "residence").

The general objective of this proposal is to give customers better access to goods and services in the Single Market by preventing direct and indirect discrimination by traders artificially segmenting the market based on customers' residence. Customers experience such differences in treatment when purchasing online, but also when travelling to other Member States to purchase goods or services.

Despite the implementation of the non-discrimination principle in Article 20(2) of Directive 2006/123/EC³ ("Services Directive"), customers still face refusals to sell and different conditions, such as price differences, when buying goods or services. This is mainly due to uncertainty on what constitutes objective criteria, justifying differences in treatment by traders.

In order to remedy this problem, both traders and customers should have more clarity about situations where differences in treatment based on residence cannot be justified.

This proposal prohibits the blocking of access to websites and other online interfaces and the re-routing of customers from one country version to another. It furthermore prohibits discrimination of customers in four specific cases of the sale of goods and services and does not allow circumventing such ban of discrimination in passive sales agreements. Both consumers and business as end users of goods or services are affected by such practices and should therefore benefit from the rules set out in this proposal. Transactions where goods or services are purchased by business for resale should, however, be excluded in order to allow traders to set up their distribution systems in compliance with European competition law.

This proposal does not address pricing and traders remain free to set their prices. It also does not address dynamic pricing, where traders adapt their offers overtime, depending on a number of factors, not linked to nationality or residence.

- **Consistency with existing policy provisions in the policy area**

The country of origin principle under Directive 2000/31/EC⁴ ('e-Commerce Directive') has created the opportunity for traders providing information society services to operate on a cross-border basis and provide in principle their services on the basis of the rules applicable in their country of establishment. Furthermore, the Services Directive includes rights for service recipients and seeks to ensure in its Article 20 that service providers established in the Union do neither directly nor indirectly treat customers differently on the basis of their nationality or

COM (2015) 192 final.

² COM (2015) 550 final.

³ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

place of residence. However, Article 20 has not sufficiently addressed discrimination against customers and has not reduced legal uncertainty for traders and enforcement bodies. As a consequence it has been difficult to enforce the non-discrimination rule in practice. This proposal ensures that in the case of conflict with Article 20(2) of the Services Directive, the provisions of this Regulation will prevail.

There are also other provisions banning discrimination (including denial of access to websites or ban of rerouting) based on nationality or place of residence, e.g. in the transport sector.⁵

Regarding non-discrimination in the use of payment means, Regulation (EU) No 260/2012 already prohibits traders from requiring bank accounts from a certain Member State for a payment to be made. Such a principle does not exist for other payment means. Regulation (EU)

2015/71 certainly facilitated the use of credit cards by capping interchange fees for card-based

payments transactions. Directive (EU) 2015/2366⁶ also paved the way for a fully integrated market for retail payments in the EU. This Regulation takes this a step further and prevents traders from applying different payment conditions for reasons related to the customer's residence. It should be recalled, however, that traders are in principle free to decide which means of payment they accept vis-à-vis local and foreign customers.

- **Consistency with other Union policies**

This proposal complements other initiatives of the Digital Single Market and Single Market Strategies, with the aim of creating the right conditions for improved access to services for consumers and businesses across the Union.

These initiatives include the proposals for a 'Directive on certain aspects concerning contracts for the supply of digital content' and for a 'Directive on certain aspects concerning contracts for the online and other distance sales of goods'. These proposals aim at establishing maximum harmonization as regards the issues covered. Once adopted, they will further reduce differences in the consumer protection legislation of Member States, especially in relation to remedies consumers enjoy in case of defective goods and digital content. Furthermore, the proposal for a "Regulation on cross border parcel delivery" aims at enhancing price transparency and regulatory oversight in that area. Consumers and small business report that problems with parcel delivery, in particular high prices, prevent them from selling more to or buying more from other Member States. The review of the "Regulation on Consumer Protection Cooperation" aims to improve co-operation between national consumer protection authorities and provide an enhanced cross-border enforcement mechanism for consumer claims. Both of these initiatives are also scheduled for publication on 25 May 2016. The initiative on extending the Single Electronic Mechanism for VAT registration, scheduled for December 2016, seeks to further simplify cross-border trading by lessening the burden on traders with regard to VAT registration and payment.

⁵ Article 1(a) and Article 4(2) of both Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport and Regulation (EU) No 1127/2010 concerning the rights of passengers when by sea and inland waterway regulate the principle of non-discrimination. Article 23(2) and 16(1) of Regulation (EC) No 1008/2008 on common rules for the operation of air services refer to non-discrimination in air transport.

⁶ 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.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 114 TFEU. This Article confers on the EU the power to adopt measures which have as their object the abolishment of the barriers to the free movement of inter alia goods and services. Efforts made to abolish such barriers can be neutralised by obstacles raised by private parties, which segment the internal market along national borders. That is all the more problematic from the viewpoint of the internal market in a situation where the relevant laws of the Member States are insufficiently clear, uniform and effective in combatting those obstacles. The proposal therefore addresses practices which hamper the free movement of goods and services.

• Subsidiarity (for non-exclusive competence)

Access to goods and services on a non-discriminatory basis within the internal market is in its essence an issue of a cross-border nature. EU intervention is necessary to prevent discrimination based on residence in case of cross-border commercial transactions. Member States' legislative intervention does not suffice in order to ensure such non-discrimination in cross border situations. In terms of effectiveness, only an EU intervention can ensure that conditions for customers' access to goods and services do not vary across the Union. EU action will ensure greater legal certainty by clarifying in which situations different treatment on the basis of residence shall be deemed discriminatory and therefore be prohibited.

Proportionality

The proposal aims to facilitate access to goods and services across the Union and creates, in particular, targeted obligations for traders not to discriminate between customers based on residence under certain specific circumstances. These obligations do not extend beyond what is necessary to solve the identified problems and are limited to situations defined in the proposal. The proposal also increases legal certainty for traders by clarifying existing obligations and specifying under which conditions customers should be treated equally in cross-border purchases. Moreover, the proposal does not impose on traders any disproportionate costs. Costs emerging from the proposal mostly consist of one-off adaption costs.

Choice of the instrument

While a non-binding instrument such as a recommendation or guidelines could support market developments in this area, the effectiveness of such instrument is expected to be very limited. The Commission guidelines on the application of Article 20(2) Service Directive of 8 June 2012 provide clarification also in specific situations, such as those covered by this proposal. However, Member States have not adapted national laws to provide more concrete rights to customers and did not step up enforcement.

Hence only a legislative instrument could effectively address the identified problems. A Regulation is preferred, as being directly applicable in Member States, establishing the same

level of obligations for private parties, and allowing for the uniform application of rules on non discrimination based on residence in all Member States.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

A large-scale public consultation was conducted from 24 September to 28 December 2015. Views from consumers, businesses, associations and Member States were sought. 433 replies were received. The results of the public consultation were published and are also contained in the Impact Assessment. Furthermore, since the beginning of 2015, the Commission had extensive discussions with stakeholders (consumers, businesses, consumer and business associations and national authorities), including through stakeholders workshops, to assess various options of a possible EU intervention and their impact. On 18 February 2016, the Commission held a workshop in Amsterdam to discuss the outcome of the public consultation and possible ways forward.

The majority of consumers and businesses agree that consumers should in principle be able to purchase and access goods and services from everywhere in the EU. The vast majority of consumers experienced geo-blocking or other geographically-based restrictions when shopping in another EU country. The goods and services most affected by geo-blocking are clothing, footwear and accessories, physical media (books), computer hardware and electronics, airplane tickets, car rental, digital content such as streaming services, computer games and software, e-books and MP3s. A majority of consumer and businesses agree that traders should inform customers about sales restrictions. Consumers expressed support for a policy option requiring traders to accept cross-border transactions, however without an obligation for them to deliver. The majority of businesses oppose an obligation to sell and deliver throughout the EU and emphasize the importance of tailoring prices on different national markets, highlighting the need to respect their contractual freedom. A large majority of all respondent groups agree that enforcement of rules and information requirements should be improved.

• Collection and use of expertise

The Commission launched a large-scale mystery shopping survey, which analysed approximately 10,500 websites in the EU and modelled typical cross-border shopping situations. A Eurobarometer survey from 2016 focusing on B2B relations revealed that firms as end users of products and services face restrictions similar to those faced by consumers. Commission services have analysed a large number of complaints related to cross-border shopping and conducted an evaluation of Article 20 of the Services Directive. In May 2015, the

Commission launched a competition inquiry into the e-commerce sector, and reported its initial

findings in March 2016.⁸ The Commission has also discussed this initiative with Member States

in expert groups on the Services and the e-Commerce Directives.

⁷ Synopsis report of the public consultation published here: <https://ec.europa.eu/digital-single-market/en/news/full-report-results-public-consultation-geoblocking>.

⁸ Initial findings published here: http://ec.europa.eu/competition/antitrust/sector_inquiries_e-commerce.html

- **Impact assessment**

An impact assessment was carried out for this proposal⁹. On 21 April 2016, the Regulatory Scrutiny Board issued a positive opinion to the impact assessment. The comments of the RSB are taken on board in the final Impact Assessment.

The final impact assessment examines five scenarios and comes to the following conclusions: The option concerning increasing transparency (option 1) was considered, but will not achieve the objective on its own but needs to be complemented. Increased transparency plus a ban on blocking access to website (option 2) combined with a consent-based solution banning automatic rerouting was considered instrumental but it will address only a small part of the problem. The preferred option (option 3) is to combine these two elements with the definition of certain specific situations in which geo-discrimination cannot be justified (for tangible goods, if there is no cross-border delivery by the trader to the Member State of the customer; for electronically supplied services, including copyright related online content services within the boundaries of applied licenses; and for services consumed in the trader's premises). Another option consisted in setting up an additional list of justifications in order to clarify the principles under Article 20(2) of the Services Directive (option 4), but was discarded due to its complexity. The last option (option 5), which would require companies to ship tangible goods cross-border, was discarded because it would impose disproportionate costs on businesses.

- **Regulatory fitness and simplification**

The proposal applies to traders and customers, i.e. consumers and businesses as end users. These categories include SMEs and also micro-enterprises. Exempting these companies from the rules could undermine the effectiveness of the measure, as the majority of online trade is conducted by SMEs, including micro-companies in the Union.

The proposal will have positive effects on competitiveness by improving access to goods and services within the internal market for consumers and businesses. Regarding international trade,

traders established in third countries are only within the scope of the Regulation to the extent they already provide services to recipients in the Union. Therefore, the proposal will not have an impact on international trade.

The proposal concerns the offline and online environment, taking account of new technological developments where relevant, and is "digital and internet ready".

- **Fundamental rights**

The proposal respects Articles 16 ('freedom to conduct a business') and 17 ('right to property') of the Charter of Fundamental Rights of the European Union. Traders are already subject to existing non-discrimination provisions under EU law. Traders can continue to decide where and when they place offers. Their freedom to refuse a sales request is limited only in line with the non-discrimination provisions of this Regulation. All other reasons not to sell remain accepted, e.g. if the product is not on stock anymore.

⁹ [Insert reference to IA/SWD]

4. BUDGETARY IMPLICATIONS

The proposal has no impact on the European Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Regulation foresees periodic reviews of the impact of the proposal by the Commission.

The Commission will monitor how the Regulation is applied by the market participants across the Union in order to ensure a consistent approach. It will also focus on the effects of the rules.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 specifies the objective and the scope of the proposal. The material scope of the proposal is aligned with that of Directive 2006/123/EC to the extent possible in order to ensure maximum legal certainty for traders and customers. This means that, inter alia, non-economic services of general interest, transport services, audio-visual services, gambling activities, healthcare services and certain social services are excluded from the scope of this Regulation. However, to make this instrument effective in the daily life of citizens, the use of payment instruments to pay for the purchase of goods and services will be covered by this instrument. The territorial scope is designed to equally include companies established in the EU and those established in third countries but providing services to recipients in the Union. Article 1 also provides certainty to traders who do not intend directing activities to other Member States but simply comply with this Regulation in respect of the application of foreign consumer law.

Article 2 contains the relevant definitions.

Article 3 establishes the obligations on traders not to prevent access to their online interfaces on the basis of customers' residence. It also requires the customer's consent for rerouting and mandates traders to make all versions of their online interfaces easily accessible for customers. The trader is exempted from these obligations where the access restrictions or rerouting are required by law. In these exceptional cases the trader has to provide a clear justification by the appropriate means.

Article 4 sets out four specific situations under which discrimination of customers based on residence is prohibited. The first situation concerns the selling of physical goods when the trader is not involved in the delivery of the product to the Member State of the customer. The second situation concerns the provision of electronically supplied services, while the third situation concerns the provision of copyright protected electronically supplied services where the trader has the required rights for the relevant territories. The fourth situation applies to services, which are provided by the trader in a Member State different from that of the customer's Member State of residence.

Article 5 provides the non-discrimination rules in payment context beyond what has already been stated in the 2012 SEPA Regulation in respect of payment via bank accounts.

Article 6 mandates that passive sales' agreements imposed on traders which are in violation of the provisions of this Regulation are automatically void. It is designed to avoid a circumvention of the other provisions of this regulation.

Article 7 and 8 set out rules improving the cooperation on enforcement between Member States' authorities.

Article 9 requests Member States to assign a competent national body providing practical assistance for consumers in relation to the obligations laid down in this Regulation.

Article 10 mandates periodic reviews of the application of the Regulation by the Commission.

Article 11 sets out that the provisions of this Regulation should apply six months after its publication to provide market participants enough time to prepare for the impact of the measure on their activities.

However, the obligations set out (i) in Article 4 (1)(b) related to electronically supplied services should apply from 1 July 2018, and (ii) in Article 4 (1)(c) related 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 and the trader has the required rights for the relevant territories should apply from 1 July 2020.

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on addressing geo-blocking and other forms of discrimination based on place of residence or establishment, or nationality within the Single Market

(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 Committee^o,

Having regard to the opinion of the Committee of the Regions',

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Important steps have already been taken to remove regulatory and administrative barriers for traders operating across the Union. However, for achieving a genuine Internal Market, which allows both traders and customers to make full use of its opportunities, it is necessary to take additional measures.
- (2) 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 neutralised through obstacles resulting from the exercise of private parties of their legal autonomy. That occurs where traders block or limit the access of customers wishing to engage in cross-border commercial transactions to traders' online applications, such as websites and apps, 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, both online and offline.
- (3) In this manner, traders segment the internal market along internal frontiers and hamper the free movement of goods and services, thus restricting the rights of recipients. This is an important factor, which contributes 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.

- (4) Pursuant to Directive 2006/123/EC¹², 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, this 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.
- (5) 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.
- (6) 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 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.
- (7) 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.
- (8) 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. These distribution systems are implemented through vertical agreements between undertakings which fall under competition law and should therefore not be covered by this Regulation.
- (9) Nevertheless, traders are not only prevented for objective reasons to trade and offer services or goods to customers in other countries. They also decide for purely commercial reasons to deny consumers from abroad access to products or services offered to local customers, including certain online contents services, or to charge them higher prices without any valid reason. This leads to artificial market segmentation to the detriment of customers interested to benefit from a wider choice in the Single Market. Clarifying situations in cross-border commercial relations, where the

¹² Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

discriminatory treatment of non-nationals cannot be justified by objective criteria will bring legal certainty for all participants of cross-border transactions.

- (10) Traders can make available their general conditions of access to goods or services to the public at large through various means, such as information published in advertisements, on websites or in (pre-) contractual documentation. Such conditions are understood to apply in the absence of an individually negotiated agreement to the contrary entered into directly with the customer.
- (11) The measures laid down in this Regulation should apply to services including the sale of goods provided by traders, which also include intermediaries acting in the name or on behalf of other companies, regardless of the technology or means used to place the order or access the market.
- (12) 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. 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 therefore excluded from the scope of this Regulation. In contrast electronic communications services which are subject to specific Union law but not to Directive 2006/123/EC, should fall within the scope of this Regulation.
- (13) 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 on common rules for the operation of air services in the Community, Regulation (EU) No 1177/2010 of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 and Regulation (EU) No 181/2011 of the European Parliament and of the Council on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 already contain broad prohibitions of discriminations covering all discriminatory practices that the present Regulation seeks to address, whereas it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passenger rights and obligations will be amended to that effect in the coming period. 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 the present Regulation.
- (14) Access to retail financial services, including payment services, should be excluded from the scope of this Regulation. However, in case of electronic transactions by credit transfer, direct debit or by a card-based instrument for which the trader can request strong customer authentication by the customer and the payments are in a currency that the trader accepts, a trader should not apply different payment conditions including refusing a transaction for reasons related to nationality, place of residence or place of establishment of the customer.
- (15) This Regulation should be without prejudice to the rules applicable in the field of taxation, given that the Treaty provides specific base for action at EU level as regards taxation matters.
- (16) The discrimination at issue here typically takes place through general terms and conditions that are set and applied by or on behalf of the trader concerned, as a

precondition for obtaining access to his or her 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 through various means, such as information published in advertisements, on websites or (pre-) contractual documentation. However, 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.

- (17) 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 the nationality, place of residence or place of establishment of a customer, who seeks to access such an online interface. 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. Traders should be obliged to give access to online interfaces and equally display commercial offerings on the Internet regardless of the physical location of the customer; however, it does not create an obligation to engage in a commercial transaction with the customer.
- (18) Certain traders operate different versions of their online interfaces, targeting customers from different Member States. While this should remain possible, redirect a customer from one version of the online interface to such other version without his or her explicit consent should be prohibited. Once a customer has given his or her explicit consent, traders should not repeatedly have to ask for such consent of that particular customer in relation to that particular online interface. However, all versions of the online interface should remain easily accessible to the customer at all times.
- (19) 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 law of Member States in accordance with Union law. Such laws may limit customers' access to certain goods or services, such as the prohibition to display specific content in certain Member States. Traders should not be prevented from complying with such requirements and thus be able to limit access to an online interface, in as far as that is necessary for that reason. Online advertisement targeted to specific markets within the Union should not be covered by prohibitions of rerouting or denial of access to information under this Regulation. [In order for customers to be informed and in a position to complain or seek redress where necessary, without imposing excessive burdens on traders, traders should be required to provide justifications where they block, limit the access of or redirect customers pursuant to such laws, without a request to this effect being required. That requirement to provide justifications should apply as a complement to the information requirements for traders regarding delivery restrictions that may apply and means of payments that are accepted pursuant to Directive 2011/83/EU.]
- (20) In a number of specific situations, any differences in the treatment through the application of general conditions of access of customers for reasons related to their nationality, place of residence or place of establishment cannot be objectively justified. In those situations, customers should be entitled, under the specific conditions laid down

in this Regulation, to shop under the same terms and conditions as a local customer and have full equal access to any of the different offers, irrespective of their nationality, place of residence or place of establishment. However, also in those situations traders should remain free to direct their activities at different Member States or groups of customers with targeted offers and differing terms and conditions, including through the setting-up of country-specific online interfaces. In certain cases, different terms and conditions of access for reasons related to the nationality, place of residence or place of establishment of the customer might be necessary in order to comply with a specific prohibition or a requirements laid down in Union law or in the law of Member States in accordance with Union law which prevents a trader from selling the goods or providing the services to certain customers or oblige them to apply different conditions of access. Such as prohibitions to sell alcohol or tobacco in certain Member States. Traders should not be prevented from complying with such prohibitions or requirements. Furthermore, in line with case C-388/01 of the European Court of Justice, this Regulation should not prevent traders from applying different conditions of access to a service on the basis of a customer's nationality or place of residence if there is a direct link between the trader's application of preferential rates and the taxation paid by the customer and if it is necessary to preserve the cohesion of the tax system.

- (21) The first of the situations which cannot be objectively justified is where the trader sells goods and there is no cross-border delivery of those goods to the Member State where the customer resides by or on behalf of the trader. If the customer is willing to pick up the product in the country of the trader or a different Member State to which the trader delivers or arrange for the cross-border part of the delivery, he or she should be able to purchase goods, such as electronics, computer hardware, cosmetics and electrical household appliances, under the same conditions of access including price as residents of the country of the trader. In this situation, the trader does not have to register for VAT in another Member State or arrange for cross-border delivery.
- (22) The second situation is where the trader provides electronically supplied services. Examples of such services include cloud services, data warehousing services, website hosting and the provision of firewalls. The third situation covers 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 required rights for the relevant territories (such as e-books, music, games and software). In those cases, no physical delivery is required. The trader can declare and pay VAT in a simplified manner according to the VAT Mini-One-Stop-Shop (MOSS) rules.
- (23) Finally, in the situation where the trader provides services and those services are received by the customer in a Member State, 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, differences in treatment based on such criteria should not be justified. Customers should regardless of their nationality, place of residence or place of establishment access offers provided by the trader. These situations concern services such as hotel accommodation, sport events, car renting, music festivals and leisure parks. In these situations, the trader does not have to register for VAT in another Member State or arrange for cross-border delivery.
- (24) Pursuant to Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I), the choice of law applicable to contracts between a consumer and a professional who pursues his commercial or professional activities in the country where the consumer has his 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 habitual residence. Pursuant to Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgement in civil and commercial matters, in matters related to a contract between a consumer and a professional who is domiciled in a Member State and 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. Thus, 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, the trader

does not incur any additional costs 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.

- (25) 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 and (EU) 1215/2012, 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.
- (26) In light of the existing framework for credit transfers and direct debits in euro, also for payment cards for which interchange fees have been capped, there are no objective criteria for traders to use payment instruments to differentiate between national and non-national customers. Therefore, the fact that a payment instrument originates from a Member State different from that of the trader or the payee, should not constitute a basis for the refusal of such payment instrument. The provisions on non-discrimination in payments should not be limited to the situations set out in Article 4 of this Regulation.
- (27) 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 to certain customers or to customers in certain territories are generally considered restrictive of competition and cannot normally be exempted from the prohibition laid down in Article 101(1) TFEU. Even when they are not caught by Article 101 TFEU, in the context of the scope 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 requiring the trader to act in violation of the provisions of this Regulation in respect of passive sales, 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 Commission Regulation (EU) No 330/2010.

- (28) Member States should designate a body or 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 financial or administrative penalties can be imposed on traders in the event of any breach of this Regulation.
- (29) 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) 2006/2004 of the European Parliament and of the Council and should also be available in relation to those rules. However, as Regulation (EC) 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) 2006/2004 should therefore be amended.
- (30) 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, and in particular of such 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 required rights for the relevant territories, it is appropriate to apply the prohibitions of Article 4 only from a later date. [To be considered whether the contract proposal should be mentioned here expressly as a reason.]
- (31) In order to achieve the objective of effectively addressing 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 set out in this Regulation 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.
- (32) 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 and can therefore, by reason of its scale and effects, 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 its objective.
- (33) This Regulation respects fundamental rights and observes the principle recognised in particular by the Charter of Fundamental Rights of the European Union and specifically Articles 16 and 17 thereof.

HAVE ADOPTED THIS REGULATION:

(1)

Article 1

Objective and scope

(2)

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.

(3)

This Regulation addresses the relations between traders and customers before, during and after the conclusion of a contract regarding the sale of goods and the provision of services supplied in any Member State within the territory of the European Union.

This Regulation shall apply in the following situations:

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- (a) where the trader seeks to or sells goods or provides services in a Member State other than the Member State in which the customer has his or her place of residence or place of establishment;
- (b) where the trader seeks or sells goods or provides services in the same Member State as the one in which the customer has his or her place of residence or place of establishment, but the customer is a national of another Member State;
- (c) where the trader seeks or sell goods or provide services in a Member State other than the Member State in which the customer is temporarily located without residing in that Member State or has its place of establishment in that Member State.
- (4) This Regulation shall not apply to activities referred to in Article 2(2) of Directive 2006/123/EC
- (5) This Regulation shall be without prejudice to the rules applicable to the field of taxation.
- (6) 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 activities to the Member State where the consumer has his habitual residence or domicile within the meaning of Article 6(1)(b) of Regulation (EC) No 593/2008 and Article 17(1)(c) of Regulation (EU) 1215/2012.
- (7) Insofar as the provisions of this Regulation conflict with the provisions of Article 20 (2) of Directive (EU) 2006/123, the provision of this Regulation shall prevail.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'card-based payment instrument' means a payment instrument as defined in Article 2 (20) of Regulation (EU) 2015/751;
- (2) 'credit transfer' means a payment service as defined in Article 4 (24) of Directive (EU) 2015/2366;
- (3) 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business, craft or profession;
- (4) '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;
- (5) 'direct debit' means a payment service as defined in Article 4 (23) of Directive (EU) 2015/2366;
- (6) 'electronically supplied services' means the services referred to in Article 7 of Council Implementing Regulation (EU) No 282/2011;
- (7) 'general conditions of access' means all terms and conditions and all other information made available to the public at large, including sale prices, by the trader through various means such as information published in advertisements, on websites or in (pre) contractual documentation and which are understood to apply in the absence of an agreement to the contrary entered into directly with the service recipient;

- (8) 'goods' means any tangible movable item as defined in Article 2 (3) of Directive (EU) 2011/83;
- (9) '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;
- (10) 'payee' means a natural or legal person as defined in point 9 of Article 4 of Directive (EU) 2015/2366;
- (11) 'payer' means a natural or legal person as defined in point 8 of Article 4 of Directive (EU) 2015/2366;
- (12) 'payment account' means an account as defined in point 12 of Article 4 of Directive (EU) 2015/2366;
- (13) 'payment instrument' means a personalised device and/or set of procedures as defined in point 14 of Article 4 of Directive (EU) 2015/2366;
- (14) 'payment service provider' means a body or natural or legal person as defined in point 11 of Article 4 of Directive (EU) 2015/2366;
- (15) 'service' means any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 of the Treaty;
- (16) '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/her name or on his/her behalf, for purposes relating to his/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 relating to the nationality, place of residence or place of establishment of the customer.
- (2) Traders shall not, for reasons relating 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 of establishment, unless the customer's gives its explicit consent prior to such redirection.
- (3) 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.
- (4) 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 is necessary in order to ensure compliance with a legal requirement in Union law or in the law of Member States in accordance with Union law.
- (5) [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 the first subparagraph, he shall provide a clear justification. That justification shall be given in the language of the online interface that the customer originally 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:
 - (a) where the trader sells goods and there is no cross-border delivery of those goods to the Member State of the customer by or on behalf of the trader;
 - (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;
 - (c) where the trader provides 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 and the trader has the required rights for the relevant territories;
 - (d) where the trader provides services and those services are received by the customer in a Member State, different from the Member State of which the customer is a national or in which the customer has his place of residence or place of establishment.
- (2) The prohibition set out in paragraph 1 shall not apply where a specific prohibition or a requirement laid down in Union law or in the law of Member States in accordance with Union law prevents the trader from selling the goods or providing the services to certain customers.

Article 5

Non-discrimination in payments

- (1) Traders shall not, for reasons related to the nationality, place of residence or place of establishment of the customer, apply different payment conditions for any sales of goods or provision of services, where those payments are made through electronic transactions by credit transfer, direct debit or a card-based payment instrument for which the payee can request strong customer authentication by the payer pursuant to the Directive (EU) 2015/2366 and the payments are in a currency that the payee accepts.
- (2) The prohibition set out in paragraph 1 shall not apply to commercial cards as defined in Regulation (EU) 2015/751.

Article 6

Agreements on passive sales

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

Article 7

Enforcement by Member State authorities and administrative cooperation

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

Article 8

Defence of collective interest of consumers

- (1) The following point shall be inserted in the Annex to Regulation (EC) No 2006/2004: "x. Regulation No. XXXX/Year of the European Parliament and of the Council of XX Month Year on addressing geo-blocking and other forms of discrimination based on place of residence or establishment, or nationality within the Single Market (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) The following point shall be inserted in the Annex to Directive 2009/22/EC: "x. Regulation No. XXXX/Year of the European Parliament and of the Council of XX Month Year on addressing geo-blocking and other forms of discrimination based on place of residence or establishment, or nationality within the Single Market (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."

Article 9

Assistance to consumers

- (1) Each Member State shall confer responsibility 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. Assistance to consumers
- (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, by [date: *nine months following the day of its publication*], develop this uniform model form, in cooperation with the bodies referred to in paragraph 1.

Article 10

Review clause

Three years after the entry into force of this Regulation the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee an interim evaluation of the Regulation. The report shall be accompanied where necessary by a proposal for the amendment of this Regulation in light of legal, technical or economic developments.

10 years after the entry into force of this Regulation, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a full evaluation of the Regulation, in order to measure the impact of the Regulation and its added value.

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 months following the day of its publication]* .

However,

- (a) Article 4(1)(b) shall apply from 1 July 2018.
- (b) Article 4(1)(c) shall apply from 1 July 2020.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President