

# European Public Policy – Client Alert

## New EU Regulation Banning Unjustified Geo-blocking

March 2018

On 28 February 2018, a new [geo-blocking regulation](#) was published that will remove barriers to e-commerce by avoiding discriminatory business practices based on the online customers' nationality, place of residence or place of establishment. It seeks to prevent discrimination of customers (i.e. consumers and companies if "end-users") concerning **access to local prices, sales or payment conditions** when buying products and services online in another European Union (EU) member state.

The new rules will **apply as of 3 December 2018**.

Geo-blocking is a **discriminatory business practice** that prevents customers and other end-users from purchasing products or services from websites based in other EU member states. A 2015 Commission survey found that only 37% of websites surveyed allowed cross-border customers to reach the final step before completing the purchase by entering their payment details. Thus, geo-blocking slows down the future deepening of the European [Digital Single Market](#).

### The Regulation in Detail

The **scope** of the regulation covers "traders" that engage in cross-border business-to-consumer (B2C) transactions, where the **customer** (natural person or an undertaking) **purchases goods or services for the sole purpose of end-use**.<sup>1</sup>

Thus, the regulation does not apply in a typical business-to-business context (B2B), where the customer purchases goods or services for subsequent **resale, transformation, processing, renting or subcontracting**.

The regulation defines **three specific situations** in which discriminatory treatment of customers from another member state cannot be justified:

- **Sale of goods** that are either delivered in a member state to which the trader offers delivery, or are collected at a location agreed upon with the customer
- **Sale of electronically supplied services**, such as cloud services, data warehousing services, website hosting and the provision of firewalls
- **Sale of services in a specific physical location**, which are received by the customer in the country where the trader operates, such as hotel accommodation, sports events, car rental or entry tickets to music festivals or leisure parks

Traders may not apply different **payment conditions** for online customers solely based on their nationality, place of residence, place of establishment, location of the payment account, place of establishment of the payment service provider or place of issue of the payment instrument within the EU.<sup>2</sup>

Traders will also not be allowed to **block or limit customers' access to their online interface** for reasons of nationality, place of residence or place of establishment – unless the laws of the traders' member state (in accordance with EU law) require this. A clear and specific explanation has to be provided if a trader blocks or limits access or redirects customers to a different version of the online interface (e.g. website).

Agreements imposing obligations on traders not to engage in **passive sales** (i.e. when sales are made in response to unsolicited offers) with certain customers, or groups of customers in certain territories, are generally considered to restrict competition and cannot normally be exempted. However, where such an exemption applies, there is a risk that they could be used to circumvent the provisions of this regulation. The relevant provisions of such agreements should, therefore, be automatically void where they impose obligations on traders to act in breach of the prohibitions laid down in this regulation.<sup>3</sup>

<sup>1</sup> Art. 2 (13).

<sup>2</sup> Art. 5.

<sup>3</sup> Art. 6.

## Exclusions

The following services are excluded from the scope of the regulation:

- Services linked to **copyright-protected content** and neighbouring rights (e.g. music streaming, e-books, software)
- **Financial, electronic communication, audio-visual, transport** and certain **healthcare or social services**, amongst others<sup>4</sup>

Unlike price discrimination, **price differentiation** will not be prohibited. In other words, there is no obligation to 'harmonize' prices: traders may charge different prices or offer different general terms and conditions across different Member States. However, online customers from other EU Member States must be able to access those differential prices or offers.

Traders will **not** be **obliged to deliver goods** to customers in another member state where the trader would not otherwise offer the possibility of such delivery.

Situations that are **purely internal to a member state**, i.e. where all the relevant elements of the transaction are confined to a single member state, are also excluded from the scope of the regulation.

## Conclusions

**Traders selling online will need to make sure by 3 December 2018** that their online point of sale in one EU member state does not discriminate against online customers based in another EU member state for reasons of nationality, place of residence or place of establishment, where it cannot be objectively justified, including:

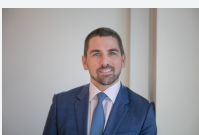
- **Re-routing customers to a different website** based on their IP address, without prior consent
- **Blocking customers** with certain IP addresses
- **Charging additional fees** to customers from different EU member states
- **Providing a different service** to customers from different member states
- **Providing different terms and conditions**

## Next Steps

For more information about this new regulation, please do not hesitate to get in touch with us.

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## Key Contacts



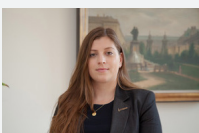
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<sup>4</sup> Art. 1.