

THE GEO-BLOCKING REGULATION

With a view to help implement the Digital Single Market, [regulation no. 2018/302](#) was published in the Official Journal on 2 March 2018. This Regulation, also termed "Geo-blocking Regulation", aims to address unjustified geographical blocking.

As a reminder, this Regulation follows on from an initiative of the European Commission, which had observed during its investigations into e-commerce that the level of cross-border transactions was relatively low within the EU in comparison with other economic areas, such as the United States.

The purpose of this Regulation is to limit, as far as possible, the artificial partitioning of the internal market based on national borders, and thus offer customers the possibility of enjoying a wider range of products in the best conditions of sale, all the while preventing discrimination based on nationality, place of residence, or any other information indicating the physical location of customers such as IP address, delivery address, language or Member State in which the payment instrument was issued.

The practice of geo-blocking, or geographical blocking, refers to economic operators using online websites (or applications) to:

- block or limit access to their online interface by customers from other Member States of the European Economic Area who wish to make a purchase on such interface;
- offer different general conditions of access to customers from other Member States of the EEA, without objective justification.

1. SCOPE OF THE REGULATION

The Geo-blocking Regulation applies to the sale of cross-border goods or services within the EEA. It does not apply to:

- audio-visual content (including sports broadcasts which are provided on the basis of exclusive territorial licences),
- retail financial services, including payment services.

This Regulation applies to the relations between sellers and end-users, be they companies or customers, unless such companies or customers purchase the good with a view to subsequent resale, transformation or rental.

Recital 16 of the Regulation states that brands will be allowed to continue to organise their distribution network via a selective or exclusive distribution system. Economic players will thus be able to further limit the number of products purchased to ensure that their clients purchase these goods for their own private use, rather than for resale.

Equally, the Regulation should not affect agreements restricting active sales within the meaning of Commission Regulation (EU) no 330/2010 (Recital 34), which mostly concerns exclusive distribution agreements.

However, Article 6 of the Regulation provides that agreements restricting passive sales are forbidden, in such a way that provisions preventing a professional from responding to unsolicited requests from customers located outside of its (exclusive) territory are automatically void.

2. FREEDOM OF ACCESS TO ONLINE INTERFACES

The Regulation lays down the two following principles:

- a trader shall neither block, nor limit, by any means whatsoever, access by a customer to an online interface for reasons linked to nationality, place of residence, or place of establishment;
- a trader shall not, for reasons related to a customer's nationality, place of residence or language selection, redirect a customer to a version of such trader's online interface that is different from the online interface to which the customer initially sought access, unless the customer has explicitly consented to such redirection.

And one exception:

- these prohibitions shall not apply where the blocking or limitation of access, or the redirection is necessary to ensure compliance with a legal requirement to which the trader's activities are subject. In such instances, the trader shall provide a clear and specific explanation to customers.

The final version of the Regulation therefore allows freedom of access to an operator's various online interfaces (including all software, websites, applications - including mobile apps - through which it is possible to conduct a purchase).

Nonetheless, the seller is not required to deliver the good to a customer established in another EEA Member State that is not already served by the website. This approach thus takes into account the logistical realities and limitations of economic operators and the difficulties they may encounter when delivering goods to other EEA Member States.

In other words, a consumer residing in Germany could freely browse from a ".de" interface to an ".fr" interface, freely purchase a product on the ".fr" interface, and have the product delivered to Germany either directly by the seller (if the seller already ensures product deliveries in that country), or by a third party. In this latter case, the seller shall bear no extra transport costs for such delivery.

3. NON-DISCRIMINATORY GENERAL CONDITIONS

Article 4 of the Regulation provides that a professional shall not apply different general conditions (price¹, payment conditions, delivery conditions) to a customer for reasons related to a customer's nationality, place of residence or place of establishment:

- when goods are delivered to a location or are collected at a location agreed upon between the trader and the customer in a Member State in which the trader offers such an option in the general conditions of access;
- when the services can be provided electronically;
- when the services, other than electronically supplied services, are requested by a customer for completion in a physical location where the trader operates (e.g. hotel accommodation, car rental, festival tickets etc.).

¹ As regards the prohibition on practising different prices, please go to section 4 below.

4. POSSIBILITY OF APPLYING PARTICULAR PRICING CONDITIONS

As regards pricing conditions, the Regulation indicates that rules to access the online interface and the non-discriminatory nature of the general conditions do not preclude traders from offering general conditions of access, in particular net sales prices that are different from one Member State to another, so long as such prices are offered in a non-discriminatory fashion to customers located in a specific country or to certain groups of clients.

The text of the Regulation is not abundantly clear in this regard, but one understands that the legislator wished to leave a certain amount of leeway to online retail sites, enabling them to provide for different general conditions, so long as such differences are justified by objective criteria.

As regards payment means, the Regulation prohibits the application of different conditions to payments made by credit transfer, direct debit or card-based payment instruments within the same payment brand and category, when the requirements in terms of authentication are fulfilled and the payment is completed in a currency accepted by the trader.

5. MONITORING AND ENTRY INTO FORCE

The Member States shall designate one or more bodies in charge of taking effective, dissuasive and proportionate measures with a view to ensuring the Regulation is applied. For France, this role is attributed to the Directorate-General for Competition, Consumer Affairs and Prevention of Fraud (or DGCCRF).

The Regulation will enter into force on **3 December 2018**. In the meantime, we remain at your disposal should you have any queries on this matter.

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