

Geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market

2016/0152(COD) - 25/05/2016 - Legislative proposal

PURPOSE: 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 (including geo-blocking).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: despite the implementation of the non-discrimination principle in [Directive 2006/123/EC](#) ("Services Directive"), customers still face refusals to sell and different conditions, when buying goods or services across borders.

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.

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. This is mainly due to uncertainty over what constitutes objective criteria that justify differences in the way traders treat customers. In order to remedy this problem, the Commission considers that traders and customers should have more clarity about the situations in which differences in treatment based on residence are not justifiable.

The [Digital Single Market Strategy](#) adopted in May 2015 and the [Single Market Strategy](#) 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.

IMPACT ASSESSMENT: five scenarios were envisaged. The preferred option consisted of combining increased transparency with a ban on blocking website access to website, combined with the consent-based solution banning of automatic rerouting with the definition of certain specific situations in which geo-discrimination cannot be justified (for goods, if there is no cross-border delivery by the trader; for electronically supplied services; and for services received outside the customer's Member State).

CONTENT: 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.

Scope: the material scope of the proposal is aligned with that of the Services Directive to the extent possible in order to ensure consistency and maximum legal certainty for traders and customers. This means that, inter alia, non-economic services of general interest, transport services, audiovisual services, gambling activities, healthcare services and certain social services are excluded from the scope of this Regulation.

The territorial scope is designed to equally include traders established in the EU and those established in third countries but selling or seeking to sell goods and services to customers in the Union.

Access to online interfaces: the proposal 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 requires traders to keep the version of the online interfaces that the customer sought to access before having been rerouted easily accessible.

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.

Access to goods or services: the proposal sets out three 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, 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;
- the third 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.

Non-discrimination rules specifically in the context of payments: this rule provides that, in certain cases, traders cannot reject or otherwise discriminate with regards to payment instruments (such as credit or debit cards).

Agreements with traders containing passive sales restrictions: the proposal provides that agreements with traders containing passive sales restrictions which would lead to violations of the rules set out in this Regulation are automatically void. It is designed to avoid circumvention of those rules by contractual means.

Enforcement by Member State authorities: 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 this Regulation.

Assistance to consumers: 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. Member States shall designate one or more bodies providing practical assistance to consumers in relation to disputes resulting from this Regulation.

Review clause: the proposal is concerned with periodic reviews of the application of the Regulation by the Commission. Here it is specified that the first evaluation (two years after the entry into force of this Regulation) should assess, in particular, whether the prohibition of discrimination should be extended to electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, provided that the trader has the requisite rights for the relevant territories.

Lastly, the proposal provides for two amendments of existing instruments relating specifically to the protection of consumers, namely [Regulation \(EC\) No 2006/2004](#) and Directive 2009/22/EC. This would mean that this Regulation is added in the Annexes of those legal acts so that it can also be enforced by way of the measures provided in the Consumer Protection Cooperation Regulation as well as the Injunctions Directive.