



GEO-BLOCKING REGULATION - APPLICABLE AS FROM 3 DECEMBER 2018

DECEMBER 2018

It happens that traders, operating in one EU Member State, block or limit access to their websites and applications by customers from other member states who would like to engage in cross-border transactions (a practice called 'geo-blocking'). This, together with the practice of traders applying different general conditions of access to their goods and services or with regard to the means of payment, based on the customer's nationality, place of residence or place of establishment, forms a barrier to the free movement of goods and services throughout the EU internal market.

These practices, if not objectively justified¹, are forbidden as from 3 December 2018, the date of applicability of the EU Regulation on Geo-blocking².

Geo-blocking: a widespread phenomenon

The European Commission's 2017 Study on Geo-blocking of Consumers Online³ showed that only in 37% of all 10.537 websites assessed, cross-border shoppers were allowed to reach the last stage of the online shopping process. This means that geo-blocking, through website access denial or through rerouting the customer to the website of the (same) trader with its own Member State domain extension, was a widespread phenomenon across different countries and various sectors in EU online selling. This prevalent practice, which enhances discrimination of EU customers if not motivated by

objectively justified reasons, should be brought to an end by the EU Regulation on Geo-blocking.

Forbidden practices

Online traders who offer their goods and services in the EU are now prohibited from discriminating customers based on their nationality, place of residence (in a B2C-context) or place of establishment (in a B2B-context) through the application of different access conditions concerning (i) their goods and services, (ii) their interfaces (website and apps) and/or (iii) the means of payment.

¹ Following EU discrimination legislation, subjects who are protected by the general prohibition of discrimination may not experience a particular disadvantage compared with other subjects, unless that provision, criterion or practice giving rise to different treatment, is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

² Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 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 Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (hereinafter the "**Geo-blocking Regulation**").

³ The EC Study on Geo-blocking looked into 143 country pairs and 8 sectors of goods and services that are most commonly purchased online in the EU. For the study's Final Report, please see: European Commission, Geoblocking study, Final report, https://ec.europa.eu/info/files/geoblocking-study-final-report_en.

Whereas discrimination with respect to the conditions of access is prohibited, differentiation may be allowed when objectively justified. For instance, if a Belgian customer has to pay a higher price for the online purchase of goods from a Spanish trader compared to a Spanish or French customer, this differing price may be justified based on higher transportation or delivery costs.

Services explicitly excluded from the scope of the Regulation

Audiovisual services, financial services, services related to transport and healthcare and social services are excluded from the scope of this Regulation.

The specific exclusion of access to retail financial services, including payment services, implies, inter alia, that the payment initiation service provider who requires customers to submit their national personal number or their social security number is not geo-blocking within the meaning of this Regulation.

Furthermore, non-audiovisual IP protected services are only partly subject to the Regulation, as it remains permitted to apply different general conditions concerning the access to non-audiovisual services linked to content protected by IP rights (e.g. online music, e-books or software) based on the nationality or place of residence/establishment of the customer.

Notwithstanding this, these non-audiovisual services remain subject to the other prohibitions of the Geo-blocking Regulation i.e. the prohibition to block or limit access to online interfaces and to discriminate regarding the electronic payment means on the basis of the nationality, residence or establishment of the customer.

For instance, a French provider of music streaming services can prevent a Belgian resident to enjoy its services in Belgium. The Belgian customer must however be allowed to access the interface, subscribe to the service and, once he crosses the French border, enjoy the service.

Main impact of the Regulation

With regard to the access to online interfaces, the Regulation puts an end to simply blocking access as well as to rerouting customers without their prior consent, which happened frequently based on their IP addresses.

Besides that, all EU citizens should be able to have access to the same goods and services as local customers have when it concerns a sale of products without delivery, a sale of electronically supplied services or a sale of services provided in a specific physical location. Only exceptional circumstances justify different treatment based on nationality or place of residence/establishment in these cases (e.g. a legal prohibition enshrined in EU law or in the legislation of the Member State concerned which in its turn must of course comply with EU law).

Discriminatory behaviour of traders with regard to the accepted means of payment, through unjustified differentiation based on the customer's nationality, place of residence/establishment, the location of the payment account, the payment services provider or the issuance of the payment instrument, is also prohibited.

Evaluation

By 23 March 2020 at the latest (being two years after the entry into force of this Regulation), the European Commission will assess whether or not the provision of non-audiovisual services linked to IP-protected content should be brought completely within the scope of this Regulation. By that same date, the Commission will evaluate all rules of the Geo-blocking Regulation.

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*For more information, please contact **Simont Braun's Digital Finance Team** (digitalfinance@simontbraun.eu).*