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A8-0172/ 001-066

## **AMENDMENTS 001-066**

by the Committee on the Internal Market and Consumer Protection

### **Report**

**Róza Gräfin von Thun und Hohenstein**

**A8-0172/2017**

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

Proposal for a regulation (COM(2016)0289 – C8-0192/2016 – 2016/0152(COD))

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### **Amendment 1**

#### **Proposal for a regulation**

##### **Title**

*Text proposed by the Commission*

*Amendment*

Proposal for a  
REGULATION OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

on addressing geo-blocking and other  
forms of discrimination based on  
**customers'** nationality, place of residence  
or **place of establishment** within the  
internal market and amending Regulation  
(EC) No 2006/2004 and Directive  
2009/22/EC

Proposal for a  
REGULATION OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

on addressing **unjustified** geo-blocking and  
other forms of discrimination based on  
**consumers'** nationality, place of residence  
or **temporary location** within the internal  
market and amending Regulation (EC) No  
2006/2004 and Directive 2009/22/EC

### **Amendment 2**

#### **Proposal for a regulation**

##### **Recital 1**

(1) 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 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. **Whereas** there may *sometimes* be objective justifications for such differential treatment, in other cases traders deny consumers wishing to engage in cross-border commercial transactions **access to goods or services**, or apply different conditions **in this regard, for purely commercial reasons**.

(1) In order to realise the **full potential** 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 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 access to their online interfaces, such as websites and apps, **by consumers** 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 **consumers** from other Member States, both online and offline. **Whilst** there may *exceptionally* be objective justifications for such differential treatment, in other cases *some* traders' **practices deny or limit access to goods or services by consumers** wishing to engage in cross-border commercial transactions, or apply **in this regard** different conditions **which are not objectively justified**. **Studies<sup>1a</sup> have shown that removing unjustified geo-blocking and other forms of discrimination based on consumers' nationality, place or residence or temporary location could foster growth and reduce average prices throughout the internal market.**

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<sup>1a</sup> See European Commission impact assessment. See also European Parliament Policy Department studies (1) "Extending the scope of the geoblocking prohibition: an economic assessment" [http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/595364/IPOL\\_IDA\(2017\)595364\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/595364/IPOL_IDA(2017)595364_EN.pdf) and (2) "The Geoblocking proposal: internal market,

*competition law and other regulatory aspects”*  
[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/595362/IPOL\\_STU\(2017\)595362\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/595362/IPOL_STU(2017)595362_EN.pdf).

### **Amendment 3**

#### **Proposal for a regulation Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*(1a) This is not a stand-alone Regulation, it is intended to be understood in conjunction with the proposal for a Directive on certain aspects concerning contracts for online and other distance sales of goods<sup>1a</sup> and the proposal for a Directive on certain aspects concerning contracts for the supply of digital content<sup>1b</sup> that it will contribute to the creation of a digital single market.*

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<sup>1a</sup> COM (2015)0635.

<sup>1b</sup> COM (2015)0634.

#### *Justification*

*The proposed regulation is explicitly to be considered in association with other proposals for legislation to create a digital single market, and its success is contingent on those proposals. Reference should thus be made to the Directive on certain aspects concerning contracts for the sales of goods and repealing Directive 1999/44/EC and the Directive on certain aspects concerning contracts for the supply of digital content and digital services.*

### **Amendment 4**

#### **Proposal for a regulation Recital 2**

*Text proposed by the Commission*

*Amendment*

(2) In this manner certain traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thus

(2) In this manner, certain traders' *practices* artificially segment the internal market along internal frontiers and hamper the free movement of goods and services,

restricting the rights of *customers* and preventing them from benefitting from a wider choice and optimal conditions. 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. Clarifying in which situations there can be no justification for differential treatment of this kind should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

thus restricting the rights of *consumers* and preventing them from benefitting from a wider choice and optimal conditions. 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.

***However, there are different underlying reasons for such practices by companies, in particular SMEs and micro-enterprises. In many cases, divergent legal environments, the legal uncertainty involved and the associated risks as regards the applicable consumer protection and environmental or labelling laws, taxation and fiscal issues, delivery costs or language requirements contribute to the traders' unwillingness to engage in commercial relations with consumers from other Member States. In other cases some traders are fragmenting the market in order to increase consumer prices.***

Clarifying in which situations there can be no justification for differential treatment of this kind ***and what the traders' responsibility would be when selling to consumers from different Member States in compliance with this Regulation*** should bring clarity and legal certainty for all participants in cross-border transactions and should ensure that rules on non-discrimination can be effectively applied and enforced across the internal market.

## Amendment 5

### Proposal for a regulation Recital 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) This Regulation aims to address geo-blocking by removing a barrier to the functioning of the internal market.***

*However, account needs to be taken of the fact that many differences in Member States' legislation, such as those resulting in different national standards or a lack of mutual recognition or harmonisation at Union level still constitute significant barriers to cross-border trade. Those barriers continue to lead to the fragmentation of the single market, often forcing traders to engage in geo-blocking practices. Therefore the European Parliament, the Council and the Commission should continue to address these barriers with a view to reduce market fragmentation and complete the single market.*

## Amendment 6

### Proposal for a regulation Recital 3

#### *Text proposed by the Commission*

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council<sup>17</sup>, 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, that 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.

#### *Amendment*

(3) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council<sup>17</sup>, 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, that provision has not been fully effective in combatting discrimination and has not sufficiently reduced legal uncertainty. *This Regulation aims to supplement Article 20 of Directive 2006/123/EC. It should not be construed as replacing that Directive. Rather, it aims to supplement it, by defining certain situations where different treatment on the basis of nationality, place of residence or temporary location cannot be justified under Article 20(2) of Directive 2006/123/EC.* Moreover, *unjustified* geo-blocking and other forms of discrimination based on nationality, place of residence or *temporary location* can also arise as a consequence of actions by traders established in third countries,

which fall outside the scope of that Directive.

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<sup>17</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

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<sup>17</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

## Amendment 7

### Proposal for a regulation Recital 4

#### *Text proposed by the Commission*

(4) 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.

#### *Amendment*

(4) For the purposes of ensuring the good functioning of the internal market ***and guaranteeing the free movement of people, goods and services without discrimination on the basis of country of origin or place of residence***, 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. ***Those measures should maintain a balance between consumer protection and economic and contractual freedom for traders.***

## Amendment 8

### Proposal for a regulation Recital 5

#### *Text proposed by the Commission*

(5) 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

#### *Amendment*

(5) This Regulation aims ***to prevent*** discrimination based on ***a consumer's*** nationality, place of residence or ***temporary location***, including geo-blocking, in cross-border commercial transactions between ***a trader and a consumer*** relating to sales of goods and the

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 *customers'* 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.

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 *consumers'* nationality, place of residence or *temporary location*. Such other criteria can be applied, in particular, on the basis of information indicating the physical location of *consumers*, such as the IP address used when accessing an online interface, the address submitted for the delivery of goods, the choice *of* language made or the Member State *in which* the *consumer's* payment instrument has been issued.

## Amendment 9

### Proposal for a regulation Recital 5 a (new)

*Text proposed by the Commission*

*Amendment*

***(5a) This Regulation should not apply to purely internal situations in which no cross-border elements can be presumed to exist and all relevant activities related, inter alia, to nationality, place of residence or temporary location, access to an online interface, access to goods or services or payment transactions are confined within one and the same Member State.***

## Amendment 10

### Proposal for a regulation Recital 6

*Text proposed by the Commission*

*Amendment*

(6) ***Considering*** that some regulatory and administrative barriers for traders have been removed across the Union in certain

(6) ***Given*** 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. As a consequence, the provisions of this Regulation should apply inter alia to non-audio-visual 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, subject however to the specific exclusion provided for in Article 4 *and the subsequent evaluation of that exclusion as provided for in Article 9. 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 excluded from the scope of this Regulation. Access to retail financial services, including payment services, should therefore also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments.*

services sectors as a result of the implementation of Directive 2006/123/EC, in terms of *its* material scope, consistency should be ensured between this Regulation and Directive 2006/123/EC. As a consequence, the provisions of this Regulation should apply inter alia to non-audio-visual 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, subject however to the specific exclusion provided for in Article 4. *It should be noted, however, that since the adoption of Directive 2006/123/EC, regulatory and administrative barriers for traders have been partially removed in other sectors also.*

## Amendment 11

### Proposal for a regulation Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

*(6a) Given the specific nature of cultural works and the specific commercial models for their distribution, this Regulation should not affect the principle of the territoriality of copyright in cultural sectors.*

## Amendment 12

### Proposal for a regulation Recital 7



(7) 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<sup>18</sup>, Regulation (EU) No 1177/2010 of the European Parliament and of the Council<sup>19</sup> and Regulation (EU) No 181/2011 of the European Parliament and of the Council<sup>20</sup> already contain broad prohibitions *of discriminations* covering all discriminatory practices that the present Regulation seeks to address. Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council<sup>21</sup> will be amended to that effect in near future. 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 this Regulation.

(7) Discrimination *also occurs* in relation to services *outside the scope of this Regulation, including* in the field of *audio-visual, financial, electronic communications*, transport *or healthcare services. Audio-visual services, including services the main feature of which is the provision of access to broadcasts of sports events which are provided on the basis of exclusive territorial licenses, should be excluded from the scope of this Regulation. Access to retail financial services, including payment services, should also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments. Concerning electronic communications, the Commission has presented a proposal for a European Electronic Communications Code which upholds the principle of non-discrimination*<sup>17a</sup>. *As regards transport*, Regulation (EC) No 1008/2008 of the European Parliament and of the Council<sup>18</sup>, Regulation (EU) No 1177/2010 of the European Parliament and of the Council<sup>19</sup> and Regulation (EU) No 181/2011 of the European Parliament and of the Council<sup>20</sup> already contain broad prohibitions *on discrimination* covering all discriminatory practices that the present Regulation seeks to address. Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council<sup>21</sup> will be amended to that effect in *the* near future. *For healthcare services, Directive 2011/24/EU of the European Parliament and of the Council*<sup>21a</sup> *already states that patients from other Member States cannot be discriminated against with regard to nationality.* Therefore, and in order to ensure consistency with the *acquis*, services in the field of, *inter alia, audio-visual, financial, electronic communications*, transport *or healthcare services* should, *at this stage*, remain

outside the scope of this Regulation.

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***<sup>17a</sup> Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) - COM(2016)0590.***

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<sup>18</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

<sup>19</sup> Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).

<sup>20</sup> Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

<sup>21</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

<sup>18</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

<sup>19</sup> Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).

<sup>20</sup> Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

<sup>21</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

***<sup>21a</sup> Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).***

## **Amendment 13**

### **Proposal for a regulation Recital 8**

*Text proposed by the Commission*

(8) This Regulation should be without

*Amendment*

(8) This Regulation should be without

prejudice to the rules applicable in the field of taxation, given that the Treaty on the Functioning of the European Union (TFEU) provides specific base for action at Union level as regards taxation matters.

prejudice to the rules applicable in the field of taxation, given that the Treaty on the Functioning of the European Union (TFEU) provides *a* specific base for action at Union level as regards taxation matters.

## **Amendment 14**

### **Proposal for a regulation Recital 9**

*Text proposed by the Commission*

*Amendment*

*(9) Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council<sup>22</sup>, the choice of law applicable to contracts between a consumer and a professional who pursues his or her commercial or professional activities in the country where the consumer has his or her 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 or her habitual residence. Pursuant to Regulation (EU) 1215/2012 of the European Parliament and of the Council<sup>23</sup>, in matters related to a contract between a consumer and a professional who 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.*

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<sup>22</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council

*of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).*

<sup>23</sup> *Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).*

## Amendment 15

### Proposal for a regulation

#### Recital 10

##### *Text proposed by the Commission*

(10) 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 of the European Parliament and of the Council<sup>24</sup> and (EU) 1215/2012 of the European Parliament and of the Council<sup>25</sup>, 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.***

##### *Amendment*

(10) This Regulation should ***be without prejudice to the applicable*** 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 of the European Parliament and of the Council<sup>24</sup> and (EU) 1215/2012 of the European Parliament and of the Council<sup>25</sup>, including the application of those acts and provisions in individual cases. Mere ***compliance with*** this Regulation should not be construed as implying that ***a trader*** directs his activities to the consumer's Member State. ***In particular, where a trader, acting in accordance with Articles 3, 4 and 5, does not block or restrict consumer access to his on-line interface, does not redirect him or her to a different version of his on-line interface to which the consumer has sought access originally, irrespective of his or her nationality or place of residence, does not apply different general conditions of access in situations provided for by this Regulation, or where the trader accepts payments instruments issued in another Member State on a non-discriminatory basis, that trader cannot be regarded, solely on these grounds, as directing his or her activities to the Member State in which the consumer has his or her***

*habitual residence or domicile.  
Furthermore, a trader is also not to be deemed as directing such activities to the Member State in which the consumer has his or her habitual residence or domicile where the trader complying with this Regulation undertakes the steps reasonably expected or requested by the consumer or required by law in order to provide the necessary information and assistance to consumer whether directly or indirectly by linking the consumer to any third parties that can provide the required assistance.*

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<sup>24</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

<sup>25</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

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<sup>24</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

<sup>25</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

## **Amendment 16**

### **Proposal for a regulation Recital 11**

#### *Text proposed by the Commission*

(11) The discriminatory practices that this Regulation seeks to address typically take place through general terms, conditions and other information set and applied by or on behalf of the trader concerned, as a precondition for obtaining access to the 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 by or on behalf of the trader through various means, such as information published in

#### *Amendment*

(11) The discriminatory practices that this Regulation seeks to address typically take place through general terms, conditions and other information set and applied by or on behalf of the trader concerned, as a precondition for obtaining access to the 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 by or on behalf of the trader through various means, such as information published in

advertisements, on websites or pre-contractual or contractual **documentation**. Such conditions apply in the absence of **an** individually negotiated **agreement to the contrary entered into directly** between the trader and the **customer**. 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.

advertisements **or** on websites, or **can form part of** pre-contractual or contractual **information**. Such conditions apply in the absence of individually negotiated **terms and conditions** between the trader and the **consumers**. Terms and conditions that are individually negotiated between the trader and the **consumers** should not be considered general conditions of access for the purposes of this Regulation. **However, the possibility of individually negotiating terms and conditions or agreeing individually upon additional rights or obligations should not result in geo-blocking or other unjustified forms of discrimination addressed by this Regulation.**

## Amendment 17

### Proposal for a regulation Recital 12

*Text proposed by the Commission*

(12) **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, subject to compliance with the rules on competition.**

*Amendment*

(12) Consumers should be safeguarded from discrimination **on grounds** related to their nationality, place of residence or **temporary location**. **However, in the case of dual-purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.**

## Amendment 18

### Proposal for a regulation Recital 14

*Text proposed by the Commission*

(14) 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 their nationality, place of residence or **place of establishment**. **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. However, that prohibition of discrimination with respect to access to online interfaces should not be understood as creating an obligation for the trader to engage in commercial transactions with **customers**.

*Amendment*

(14) In order to increase the possibility for **consumers** to access information related to sales of goods and the provision of services **within** the internal market and to increase transparency, including with respect to prices, traders **and online marketplaces** should not, through the use of technological measures or otherwise, prevent **consumers** from having full and equal access to online interfaces on the basis of their nationality, place of residence or **temporary location**. **Full and equal access to online interfaces in the form of a mobile application should include the possibility for the consumer to download and access any version of the mobile application that a trader operates in one or more Member State**. Technological measures **to prevent such access** can encompass, in particular, any technologies used to determine the physical location of the **consumer**, including the tracking of that **location** by means of IP address, coordinates obtained through a global navigation satellite system or data related to a payment transaction. However, that prohibition of discrimination with respect to access to online interfaces should not be understood as creating an obligation for the trader to engage in commercial transactions with **a consumer**.

**Amendment 19**

**Proposal for a regulation**  
**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

**(14a) In order to ensure the equal treatment of consumers and to avoid discrimination in practice, traders' websites, mobile applications and all other interfaces should be designed to allow data entry in forms from a Member State other than that of the trader. In particular, websites should permit the**

*entry of addresses, telephone numbers, including international prefixes, bank account numbers, including IBAN and BIC numbers, and any other data from a Member State other than that of the trader if such information is required in order to complete an order through that trader's online interface. Requiring a consumer to use solely other means to order, such as email or a telephone, should not be permitted unless these are the primary means by which all consumers, including those from the Member State of the trader, make such orders.*

## Amendment 20

### Proposal for a regulation Recital 15

*Text proposed by the Commission*

(15) Certain traders operate different versions of their online interfaces, targeting **customers** from different Member States. While this should remain possible, redirecting a **customer** from one version of the online interface to another version without his or her explicit consent should be prohibited. All versions of the online interface should remain easily accessible to the **customer** at all times.

*Amendment*

(15) Certain traders operate different versions of their online interfaces, targeting **consumers** from different Member States. While this should remain possible, redirecting a **consumer** from one version of the online interface to another version without his or her explicit consent should be prohibited. **Traders should not be under the obligation to require consumer's explicit consent each time the same consumer visits the same online interface. Once the consumer's explicit consent has been given, it should be deemed to be valid for all subsequent visits of the same consumer to the same online interface.** All versions of the online interface should remain easily accessible to the **consumer** at all times.

## Amendment 21

### Proposal for a regulation Recital 16



*Text proposed by the Commission*

(16) 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 laws of Member **States** in accordance with Union law. Such laws can limit **customers'** access to certain goods or services, for instance by prohibiting the display of specific content in certain Member States. Traders should not be prevented from complying with such requirements and thus be able to block, limit **the** access or redirect certain **customers or customers** in certain territories **to an online interface, insofar as that** is necessary for that reason.

*Amendment*

(16) In certain cases, blocking **or** limiting of access, or redirection without the **consumer's** consent to an alternative version of an online interface for reasons related to the **consumer's** nationality, place **of** residence or **temporary location** might be necessary in order to ensure compliance with a legal requirement in Union law or in the laws of **a** Member **State** in accordance with Union law. Such laws can limit **consumers'** access to certain goods or services, for instance by prohibiting the display of specific content in certain Member States. Traders should not be prevented from complying with such requirements and **should** thus be able to block, limit access or redirect certain **groups of consumers or consumers** in certain territories **in so far as this may be** necessary for that reason.

**Amendment 22**

**Proposal for a regulation**  
**Recital 17**

*Text proposed by the Commission*

(17) In a number of specific situations, any differences in the treatment of **customers** through the application of general conditions of access, including outright refusals to sell goods or to provide services, for reasons related to the **customers'** nationality, place of residence or **place of establishment** cannot be objectively justified. In those situations, all such discrimination should be prohibited and **customers** should consequently be entitled, under the specific conditions laid down in this Regulation, to engage in commercial transactions under the same conditions as a local **customer** and have full and equal access to any of the different goods or services offered irrespective of **their** nationality, place of residence or

*Amendment*

(17) In a number of specific situations, any differences in the treatment of **consumers** through the application of general conditions of access, including outright refusals to sell goods or to provide services, for reasons related to the **consumers'** nationality, place of residence or **temporary location** cannot be objectively justified. In those situations, all such discrimination should be prohibited and **consumers** should consequently be entitled, under the specific conditions laid down in this Regulation, to engage in commercial transactions under the same conditions as a local **consumer** and **should** have full and equal access to any of the different goods or services offered, irrespective of **his or her** nationality, place

*place of establishment*. Where necessary, **traders** should therefore take measures to ensure compliance with that prohibition of discrimination *if otherwise the customers concerned would be precluded from having such full and equal access*.

However, the prohibition applicable in those situations should not be understood as precluding traders from directing their activities at different Member States or certain groups of **customers** with targeted offers and differing **terms and** conditions, including through the setting-up of country-specific online interfaces.

of residence or *temporary location*. Where necessary, **a trader** should therefore take measures to ensure compliance with that prohibition of discrimination. However, the prohibition applicable in those situations should not be understood as precluding traders from directing their activities at different Member States or certain groups of **consumers** with targeted offers and differing **general** conditions **of access**, including through the setting-up of country-specific online interfaces *including those with different prices*.

## Amendment 23

### Proposal for a regulation Recital 18

#### *Text proposed by the Commission*

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the **customer** resides. In that situation the **customer** should be able to purchase goods, under exactly the same conditions, including price and conditions relating to the delivery of the goods, as similar **customers** who are residents of the Member State *of the trader*. That *may* mean that a foreign **customer** will have to pick up the good in that Member State, or in a different Member State to which the trader delivers. In this situation, there is no need to register for value added tax ("VAT") in the Member State of the **customer**, *nor arrange for the cross-border delivery of goods*.

#### *Amendment*

(18) The first of those situations is where the trader sells goods and there is no cross-border delivery of those goods by or on behalf of the trader to the Member State where the **consumer** resides. *Instead, the trader offers delivery to a location in a Member State other than the Member State of residence of the consumer, including a possibility to collect the goods at a location to be agreed upon between the trader and the consumer*. In that situation the **consumer** should be able to purchase goods under exactly the same conditions, including price **conditions** and conditions relating to the delivery of the goods, as similar **consumers** who are residents of the Member State *in which the goods are delivered or in which the goods are collected*. That *might* mean that a foreign **consumer** will have to pick up the good in that Member State, or in a different Member State to which the trader delivers, *or arrange, by their own private means, the cross-border delivery of the goods*. In this situation, *in accordance with Council Directive 2006/112/EC<sup>1a</sup>*, there is no need

to register for value added tax ("VAT") in the Member State of the *consumer*.

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*<sup>1a</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1.*

## Amendment 24

### Proposal for a regulation Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

*(19a) The third situation is where consumers seek to receive 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, such as e-books or online music, games or software, provided that the trader has the rights or has acquired the licence to use such content for the relevant territories. In this case too, no physical delivery is required, as the services are being supplied electronically. The trader can declare and pay VAT in a simplified manner in accordance with the rules on VAT Mini-One-Stop-Shop (MOSS) set out in Implementing Regulation (EU) No 282/2011.*

## Amendment 25

### Proposal for a regulation Recital 20

*Text proposed by the Commission*

*Amendment*

(20) Finally, in the situation where the trader provides services and those services are received by the *customer* in *the* premises *of* or at a location *chosen by the trader and different from* the Member

(20) Finally, in the situation where the trader provides services and those services are received by the *consumer* in premises or at a location *not situated in* the Member State in which the *consumer* has his or her

State *of which the customer is a national or* in which the *customer* has his or her place of residence *or place of establishment*, the application of different general conditions of access for reasons related to *such criteria* should not be justified either. Those situations concern, as the case may be, the provision of services such as hotel accommodation, *sport* events, car rental, and entry tickets to music festivals or leisure parks. In those situations, the trader does not have to register for VAT in another Member State *nor arrange for cross-border delivery of goods*.

## Amendment 26

### Proposal for a regulation Recital 21

#### *Text proposed by the Commission*

(21) In all those situations, by virtue of the provisions on the law applicable to contractual obligations and on jurisdiction set out in Regulations (EC) No 593/2008 and (EU) 1215/2012, 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*, compliance with this Regulation does not *imply* any additional costs for the trader 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.*

place of residence, the application of different general conditions of access for reasons related to *the nationality, place of residence or temporary location of the consumer* should not be justified either. Those situations concern, as the case may be, the provision of services *excluding electronically supplied services*, such as hotel accommodation, *sports* events, car rental, and entry tickets to music festivals or leisure parks. In those situations, the trader does not have to register for VAT in another Member State.

#### *Amendment*

(21) In all those situations, by virtue of the provisions on the law applicable to contractual obligations and on jurisdiction set out in Regulations (EC) No 593/2008 and (EU) *No* 1215/2012, where a trader does not pursue his activities in the Member State of the consumer or does not direct his activities there, compliance with this Regulation does not *involve* any additional costs for the trader associated with jurisdiction or differences in applicable law.

## **Amendment 27**

### **Proposal for a regulation Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21a) In all of those situations, the general conditions of access should comply with the laws and regulations of the Member State where the trader pursues his or her activities or to which he or she directs his or her activities. A trader does not need to ensure that the general conditions of access comply with the laws and regulations, or to use the language, of the Member State of residence of a consumer to whom the trader does not intend to sell.***

## **Amendment 28**

### **Proposal for a regulation Recital 21 b (new)**

*Text proposed by the Commission*

*Amendment*

***(21b) The use of a language in a trader's online interface cannot in itself be adduced as indicating that the trader is intent on selling to consumers from another Member State.***

### *Justification*

*While the general terms and conditions should include an indication of the trader's intended market, it should not be assumed, in cases of doubt, that the mere use of a particular language indicates intent to attract purchasers from another Member State in which that language is used.*

## **Amendment 29**

### **Proposal for a regulation Recital 21 c (new)**

***(21c) Pursuant to Directive 1999/44/EC of the European Parliament and of the Council<sup>1a</sup>, a consumer has the right, in the case of a lack of conformity of consumer goods with the contract, to require the seller to repair those goods or to replace them, in either case free of charge, unless this is impossible or disproportionate. That Directive limits the costs to be borne by the seller to the necessary costs incurred to bring the goods into conformity. Moreover, that Directive does not preclude in certain circumstances the consumer's right to reimbursement of the cost of repair or replacement from being limited, where necessary, to an amount proportionate to the value the goods would have if there were no lack of conformity and the significance of the lack of conformity. Where applicable, rules on precontractual information, language requirements, the right of withdrawal, its exercise and its effects, delivery, and the passing of risk are governed by Directive 2011/83/EU of the European Parliament and of the Council<sup>1b</sup>. That Directive determines inter alia what costs are to be incurred by consumers and traders in case of withdrawal from a distance or off-premises contract. The application of this Regulation should be without prejudice to Directives 1999/44/EC and 2011/83/EU.***

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***<sup>1a</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).***

***<sup>1b</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council***

*and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).*

## Amendment 30

### Proposal for a regulation Recital 22

#### *Text proposed by the Commission*

(22) Traders falling under the special scheme provided in Chapter 1 of Title XII of **Council** Directive 2006/112/EC<sup>27</sup> are not required to pay VAT. For those traders, when providing electronically supplied services, the prohibition **of** applying different general conditions of access for reasons related to the nationality, place of residence or **place of establishment** of the **customer** would **imply** a requirement to register in order to account for VAT of other Member States and might entail additional costs, which would **be** a disproportionate burden, considering the size and characteristics of the traders concerned. Therefore, those traders should be exempted from that prohibition for such time as such a scheme is applicable.

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<sup>27</sup> *Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1–118)*

## Amendment 31

### Proposal for a regulation Recital 23

#### *Text proposed by the Commission*

(23) In all those situations, traders may in some cases be prevented from selling

#### *Amendment*

(22) Traders falling under the special scheme provided **for** in Chapter 1 of Title XII of Directive 2006/112/EC are not required to pay VAT **in the Member State in which they are established**. For those traders, when providing electronically supplied services, the prohibition **against** applying different general conditions of access for reasons related to the nationality, place of residence or **temporary location** of the **consumer** would **involve** a requirement to register in order to account for VAT of other Member States and might entail additional costs, which would **impose** a disproportionate burden, considering the size and characteristics of the traders concerned. Therefore, those traders should be exempted from that prohibition for such time as such a scheme is applicable.

(23) In all those situations, traders may in some cases be prevented from selling

goods or providing services to certain **customers** or to **customers** in certain territories, for reasons related to the nationality, place of residence or **place of establishment** of the **customer**, as a consequence of a specific prohibition or a requirement laid down in Union law or in the laws of **Member States** in accordance with Union law. Laws of Member States may also require, in accordance with Union law, traders to respect certain rules on the pricing of books. Traders should not be prevented from complying with such laws in as far as necessary.

goods or providing services to certain **groups of consumers** or to **consumers** in certain territories, for reasons related to the nationality, place of residence or **temporary location** of the **consumer**, as a consequence of a specific prohibition or a requirement laid down in Union law or in the laws of **a Member State** in accordance with Union law. Laws of Member States may also require, in accordance with Union law, traders to respect certain rules on the pricing of books. ***In addition, the laws of Member States may require that electronically supplied publications should be able to benefit from the same preferential VAT rate treatment as publications on any means of physical support, as provided for in the proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals<sup>1a</sup>.*** Traders should not be prevented from complying with such laws in as far as necessary.

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<sup>1a</sup> COM(2016)0758.

## Amendment 32

### Proposal for a regulation Recital 24

#### *Text proposed by the Commission*

(24) Under Union law, traders are in principle free to decide which means of payment they wish to accept, ***including payment brands***. However, once this choice has been made, in view of the existing legal framework for payment services, ***there are no reasons for*** traders to discriminate **customers** within the Union by refusing certain commercial transactions, or by otherwise applying certain different conditions of payment in respect of those transactions, for reasons related to the nationality, place of residence or ***place of establishment*** of the **customer**.

#### *Amendment*

(24) Under Union law, traders are in principle free to decide which means of payment they wish to accept. ***In accordance with Regulation (EU) 2015/751 of the European Parliament and of the Council<sup>1a</sup> and Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>1b</sup>, retailers accepting a card-based payment instrument of a specific payment brand and category are not under an obligation to accept card-based payment instruments of the same category but of a different brand, or of the same brand but a different category.***



In this particular context, such unjustified unequal treatment for reasons related to the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union should be expressly prohibited *as well*. It should be further recalled that Regulation (EU) No 260/2012 already prohibits all *payees, including* traders, from requiring bank accounts to be located in a certain Member State for a payment in euro to be accepted.

However, once this choice has been made, in view of the existing legal framework for payment services, traders *should not* discriminate *between consumers* within the Union by refusing certain commercial transactions, or by otherwise applying certain different conditions of payment in respect of those *payment* transactions, for reasons related to the nationality, place of residence or *temporary location* of the *consumer*. In this particular context, such unjustified unequal treatment for reasons related to the location of the payment account, the place of establishment of the payment service provider or the place of issue of the payment instrument within the Union should *likewise* be expressly prohibited. It should be further recalled that Regulation (EU) No 260/2012 *of the European Parliament and of the Council*<sup>1c</sup> already prohibits all traders from requiring bank accounts to be located in a certain Member State for a payment in euro to be accepted.

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<sup>1a</sup> *Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123, 19.5.2015, p. 1).*

<sup>1b</sup> *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 (OJ L 337, 23.12.2015, p. 35).*

<sup>1c</sup> *Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).*

## Amendment 33

### Proposal for a regulation Recital 25

#### *Text proposed by the Commission*

(25) Directive 2015/2366/EU *of the European Parliament and of the Council*<sup>28</sup> introduced strict security requirements for the initiation and processing of electronic payments, which reduced the risk of fraud for all new and more traditional means of payment, especially online payments. Payment service providers are obliged to apply so-called strong **customer** authentication, an authentication process that validates the identity of the user of a payment service or of the payment transaction. For remote transactions, such as online payments, the security requirements go even further, requiring a dynamic link to the amount of the transaction and the account of the payee, to further protect the user by minimising the risks in case of mistakes or fraudulent attacks. As a result of *these* provisions, the risk of payment fraud in *national and* cross-border purchases *is brought to an equal level and should not be used as an argument to refuse or discriminate any commercial transactions within the Union.*

#### *Amendment*

(25) Directive 2015/2366/EU introduced strict security requirements for the initiation and processing of electronic payments, which reduced the risk of fraud for all new and more traditional means of payment, especially online payments. Payment service providers are obliged to apply so-called strong **consumer** authentication, an authentication process that validates the identity of the user of a payment service or of the payment transaction. For remote transactions, such as online payments, the security requirements go even further, requiring a dynamic link to the amount of the transaction and the account of the payee, to further protect the user by minimising the risks in case of mistakes or fraudulent attacks. As a result of *those* provisions, the risk of payment fraud in cross-border purchases *has been significantly reduced. However, in the case of direct debits where the trader might not be able to assess a consumer's creditworthiness properly, or it would require entering into a new or modified contract with the payment solution providers, the trader should be allowed to request an advance payment via SEPA credit transfer before dispatching the goods or providing the service. Different treatment is therefore justifiable in situations where there are no other means available to the trader to verify the creditworthiness of the consumer.*

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<sup>28</sup> 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 (OJ L 337, 23.12.2015, p. 35–127).*

## Amendment 34

### Proposal for a regulation Recital 26

#### *Text proposed by the Commission*

(26) 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<sup>29</sup> 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 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*** in respect of passive sales requiring the trader to act in violation of this Regulation 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 Regulation (EU) No 330/2010.

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<sup>29</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1).

#### *Amendment*

(26) 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<sup>29</sup> to certain ***groups of consumers*** or to ***consumers*** in certain territories are generally considered restrictive of competition and cannot normally be exempted from the prohibition laid down in Article 101(1) TFEU. The relevant provisions of such agreements in respect of passive sales requiring the trader to act in violation of this Regulation should therefore be automatically ***null and*** 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 Regulation (EU) No 330/2010.

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<sup>29</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1).

## Amendment 35

### Proposal for a regulation Recital 27

#### *Text proposed by the Commission*

(27) Member States should designate one or more 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, proportionate and dissuasive **penalties** can be **imposed on** traders in the event of any breach of this Regulation.

#### *Amendment*

(27) Member States should designate one or more **responsible** bodies **with necessary powers to take** effective action to monitor and to **ensure** compliance with the **provisions** of this Regulation. Member States should also ensure that effective, proportionate and dissuasive **measures** can be **taken against** traders in the event of any breach of this Regulation.

## Amendment 36

### Proposal for a regulation Recital 28

#### *Text proposed by the Commission*

(28) Consumers should be **in the position** to receive assistance from responsible **authorities** facilitating the resolution of conflicts with traders, arising from the application of this Regulation, **including by way of a uniform complaint form**.

#### *Amendment*

(28) Consumers should be **able** to receive assistance from responsible **bodies** facilitating the resolution of conflicts with traders arising from the application of this Regulation. **To that end, Member States should designate as bodies responsible for providing assistance, inter alia, the Online Dispute Resolution contact points referred to in Regulation (EU) No 524/2013 of the European Parliament and of the Council<sup>1a</sup>.**

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<sup>1a</sup> Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1).

## Amendment 37

### Proposal for a regulation Recital 29

#### *Text proposed by the Commission*

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should concentrate, in particular, on the possible extension of the ***prohibition of Article 4(1)(b) 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.***

#### *Amendment*

(29) This Regulation should be regularly evaluated, with a view to proposing amendments where necessary. The first evaluation should ***analyse in-depth the overall impact of the Regulation on the internal market and cross-border e-Commerce. It should*** concentrate, in particular, on the possible extension of the ***scope of this Regulation to other sectors. This should take due account of the specificities of each sector. In particular, the evaluation of the extension to audio-visual services should be based on detailed price and cost data which only service providers possess. Therefore, those providers should cooperate in the evaluation in order to facilitate the assessment of whether the inclusion of those services within the scope of this Regulation would lead to the evolution of business models which are more efficient than those currently used.***

## Amendment 38

### Proposal for a regulation Recital 30

#### *Text proposed by the Commission*

(30) 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) No 2006/2004 of the European Parliament and of the Council<sup>30</sup> should also be available in relation to those rules. ***However, as Regulation (EC) No 2006/2004 only applies with respect to laws that protect consumers' interests, those measures should be available only***

#### *Amendment*

(30) 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) No 2006/2004 of the European Parliament and of the Council<sup>30</sup> should also be available in relation to those rules.

*when the customer is a consumer.  
Regulation (EC) No 2006/2004 should  
therefore be amended accordingly.*

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<sup>30</sup> Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (OJ L 364, 9.12.2004, p. 1).

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<sup>30</sup> Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (OJ L 364, 9.12.2004, p. 1).

## Amendment 39

### Proposal for a regulation Recital 31

#### *Text proposed by the Commission*

(31) In order to allow for the bringing of actions for injunctions aimed at the protection of the collective interests of consumers with respect to acts contrary to this Regulation in accordance with Directive 2009/22/EC of the European Parliament and of the Council<sup>31</sup>, that Directive should also be amended, so as to include a reference to this Regulation in its Annex I.

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<sup>31</sup> Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30).

#### *Amendment*

(31) In order to allow for the bringing of actions for injunctions aimed at the protection of the collective interests of consumers with respect to acts contrary to this Regulation in accordance with Directive 2009/22/EC of the European Parliament and of the Council<sup>31</sup>, that Directive should also be amended, so as to include a reference to this Regulation in its Annex I. ***Consumers should also be encouraged to make good use of mechanisms for the out-of-court resolution of disputes concerning contractual obligations stemming from online sales or services contracts established under Regulation (EU) No 524/2013.***

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<sup>31</sup> Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30).

#### *Justification*

*Clarification, that ODR can be the appropriate means of dispute resolution in this particular*

*field.*

#### Amendment 40

##### Proposal for a regulation Recital 32

*Text proposed by the Commission*

*(32) 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, 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, it is appropriate to apply the prohibition of Article 4(1)(b) only from a later date with respect to the provision of those services.*

*Amendment*

*deleted*

#### Amendment 41

##### Proposal for a regulation Recital 33

*Text proposed by the Commission*

(33) In order to achieve the objective of effectively addressing direct and indirect 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 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.

*Amendment*

(33) In order to achieve the objective of effectively addressing direct and indirect discrimination based on the nationality, place of residence or *temporary location of consumers*, 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 across the Union and their *entry* 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 *consumers* to fully benefit from those rules.

## Amendment 42

### Proposal for a regulation Recital 34

#### *Text proposed by the Commission*

(34) 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, due to the cross-border nature of the problem and the insufficient clarity of the existing legal framework, but can rather, by reason of its scale and potential effect on trade in the internal market 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 that objective.

#### *Amendment*

(34) Since the objective of this Regulation, namely the prevention of direct and indirect discrimination based on ***the*** nationality, place of residence or ***temporary location of consumers***, including geo-blocking, in commercial transactions with traders within the Union, cannot be sufficiently achieved by Member States, due to the cross-border nature of the problem and the insufficient clarity of the existing legal framework, but can rather, by reason of its scale and potential effect on trade in the internal market, 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 that objective.

## Amendment 43

### Proposal for a regulation Recital 35

#### *Text proposed by the Commission*

(35) This Regulation respects fundamental rights and observes the principle recognised in the Charter of Fundamental Rights of the European Union. In particular this Regulation seeks to ensure full respect of Articles 16 ***and 17*** thereof,

#### *Amendment*

(35) This Regulation respects fundamental rights and observes the principle recognised in the Charter of Fundamental Rights of the European Union. In particular this Regulation seeks to ensure full respect of Articles ***11 (freedom of expression and information), 16 (freedom to conduct a business), 17 (right to property) and 38 (consumer protection)*** thereof,



## Amendment 44

### Proposal for a regulation Article 1

*Text proposed by the Commission*

#### Article 1

##### ***Objective and scope***

1. 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***.

2. ***This Regulation applies to the following situations:***

(a) ***where the trader sells goods, provides services, or seeks to do so, in a Member State other than the Member State in which the customer has the place of residence or the place of establishment;***

(b) ***where the trader sells goods, provides services, or seeks to do so, in the same Member State as the one in which the customer has the place of residence or place of establishment, but the customer is a national of another Member State;***

(c) ***where the trader sells goods or provides services, or seeks to do so, in a Member State in which the customer is temporarily located without residing in that Member State or having the place of establishment in that Member State.***

3. ***This Regulation does not apply to the activities referred to in Article 2(2) of Directive 2006/123/EC.***

4. ***This Regulation shall be without prejudice to the rules applicable to the field of taxation.***

5. ***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***

*Amendment*

#### Article 1

##### ***Subject matter***

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 ***temporary location of consumers and to further supplement Article 20 of Directive 2006/123/EC.***

*his or her activities to the Member State where the consumer has the habitual residence or domicile within the meaning of point (b) of Article 6(1) of Regulation (EC) No 593/2008 and point (c) of Article 17(1) of Regulation (EU) 1215/2012.*

*6. Insofar as the provisions of this Regulation conflict with the provisions of Article 20(2) of Directive 2006/123/EC, the provisions of this Regulation shall prevail.*

## **Amendment 45**

### **Proposal for a regulation Article 1 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 1a**

##### **Scope**

- 1. This Regulation does not apply to purely internal situations in which all relevant elements of the transaction are confined within a single Member State.*
- 2. This Regulation does not apply to the activities referred to in Article 2(2) of Directive 2006/123/EC.*
- 3. This Regulation shall be without prejudice to the rules applicable in the field of taxation.*
- 4. In so far as the provisions of this Regulation conflict with the provisions of Article 20(2) of Directive 2006/123/EC, the provisions of this Regulation shall prevail.*
- 5. This Regulation shall be without prejudice to the applicable Union law concerning judicial cooperation in civil matters. Mere compliance with this Regulation shall not be construed as implying that a trader directs his or her activities to the Member State where the consumer has the habitual residence or domicile within the meaning of point (b)*

*of Article 6(1) of Regulation (EC) No 593/2008 and point (c) of Article 17(1) of Regulation (EU) 1215/2012. In particular, where a trader, acting in accordance with Articles 3, 4 and 5, does not block or restrict consumer access to his on-line interface, does not redirect him or her to a different version of his on-line interface to which the consumer has sought access originally, irrespective of his or her nationality or place of residence, does not apply different general conditions of access in situations provided for by this Regulation, or where the trader accepts payments instruments issued in another Member State on a non-discriminatory basis, that trader cannot be regarded, solely on these grounds, as directing his or her activities to the Member State in which the consumer has his or her habitual residence or domicile.*

*Furthermore, a trader shall also not be deemed to direct his or her activities to the Member State in which the consumer has his or her habitual residence or domicile where the trader acting in accordance with this Regulation undertakes the steps reasonably expected or requested by the consumer or required by law in order to provide the necessary information and assistance to consumer whether directly or indirectly by linking the consumer to any third parties that can provide the required assistance.*

#### **Amendment 46**

##### **Proposal for a regulation Article 2 – paragraph 1**

*Text proposed by the Commission*

For the purposes of this Regulation, ***the definitions set out in*** Article 7 of Implementing Regulation (EU) No 282/2011, Article 2(10), (20) and (30) of Regulation (EU) 2015/751 ***of the European Parliament and Council***<sup>32</sup> and

*Amendment*

For the purposes of this Regulation:

Article 4(8), (9), (11), (12), (14), (23), (24) and (30) of Directive (EU) 2015/2366 **shall apply**.

(a) *'electronically supplied services' has the meaning assigned to that term by Article 7 of Implementing Regulation (EU) No 282/2011;*

(b) *'interchange fee', , has the meaning assigned to that term by Article 2(10) of Regulation (EU) 2015/751;*

(c) *'card-based payment instrument' has the meaning assigned to that terms by Article 2(20) of Regulation (EU) 2015/751;*

(d) *'payment brand' has the meaning assigned to that term by Article 2(30) of Regulation (EU) 2015/751;*

(e) *'payment transaction' has the meaning assigned to that term by Article 4(5) of Directive (EU) 2015/2366.*

(f) *'payer' has the meaning assigned to that terms by Article 4(8) of Directive (EU) 2015/2366;*

(g) *'payment service provider' has the meaning assigned to that terms by Article 4(11) of Directive (EU) 2015/2366;*

(h) *'payment account' has the meaning assigned to that terms by Article 4(12) of Directive (EU) 2015/2366;*

(i) *'payment instrument' has the meaning assigned to that terms by Article 4(14) of Directive (EU) 2015/2366;*

(j) *'direct debit' has the meaning assigned to that terms by Article 4(23) of Directive (EU) 2015/2366;*

(k) *'credit transfer' has the meaning assigned to that terms by Article 4(24) of Directive (EU) 2015/2366;*

(i) *'strong customer authentication' has the meaning assigned to that terms by Article 4(30) of Directive (EU) 2015/2366;*

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<sup>32</sup> *Regulation (EU) 2015/751 of the*

*European Parliament and of the Council  
of 29 April 2015 on interchange fees for  
card-based payment transactions (OJ L  
123, 19.5.2015, p. 1).*

#### **Amendment 47**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

The following definitions shall also apply:

The following definitions shall also apply  
*for the purposes of this Regulation:*

#### **Amendment 48**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

*(c) '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;*

*deleted*

*Justification*

*In order to guarantee freedom of contract, B2B contracts should be excluded from this  
Regulation with the consequence that the Regulation only applies to B2C contracts.*

#### **Amendment 49**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

(d) 'general conditions of access' means  
all terms, conditions and other information,  
including sale prices, regulating *the* access  
*of customers* to goods or services offered

(d) 'general conditions of access' means  
all terms, conditions and other information,  
including *net* sale prices, regulating access  
*by consumers* to goods or services offered

for sale by a trader, which are set, applied and made available to the public at large by or on behalf of the trader and which apply in the absence of an individually negotiated agreement between the trader and the *customer*;

for sale by a trader, which are set, applied and made available to the public at large by or on behalf of the trader and which apply in the absence of an individually negotiated agreement between the trader and the *consumer*;

## Amendment 50

### Proposal for a regulation

#### Article 2 – paragraph 2 – point e

##### *Text proposed by the Commission*

(e) 'goods' means any tangible movable item, with the exception of items sold by way of execution or otherwise by authority of law; water, gas and electricity ***shall be considered as goods within the meaning of this Regulation where*** they are put up for sale in a limited volume or a set quantity;

##### *Amendment*

(e) 'goods' means any tangible movable item, with the exception of ***(i)*** items sold by way of execution or otherwise by authority of law, ***and (ii)*** water, gas and electricity ***unless*** they are put up for sale in a limited volume or a set quantity;

##### *Justification*

*Alignment with the online sales proposal.*

## Amendment 51

### Proposal for a regulation

#### Article 2 – paragraph 2 – point f

##### *Text proposed by the Commission*

(f) '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 with respect to those goods or services;

##### *Amendment*

(f) 'online interface' means any software, including a website ***or a part thereof and mobile*** applications, operated by or on behalf of a trader, which serves to give ***consumers*** access to the trader's goods or services with a view to engaging in a commercial transaction with respect to those goods or services;

## Amendment 52

### Proposal for a regulation

#### Article 2 – paragraph 2 – point f a (new)

*Text proposed by the Commission*

*Amendment*

*(fa) 'online marketplace' means a digital service that allows consumers to conclude online sales or service contracts with traders either on the website of the online marketplace or on a trader's website that uses computing services provided by the online marketplace;*

## Amendment 53

### Proposal for a regulation

#### Article 3

*Text proposed by the Commission*

*Amendment*

#### Article 3

#### Article 3

##### Access to online interfaces

##### 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 related to the nationality, place of residence or *place of establishment* of the *customer*.

1. *A trader and an online marketplace* shall not, through the use of technological measures or otherwise, block or limit *consumers'* access to *his or her* online interface for reasons related to the nationality, place of residence or *temporary location* of the *consumer*.

2. *Traders* shall not, for reasons related 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 establishment*, unless the customer gives his or her explicit consent *prior* to such redirection.

2. *A trader* shall not, for reasons related to the nationality, place of residence or *temporary location of a consumer*, redirect *a consumer* to a version of *his or her* online interface that is different from the online interface which the *consumer initially* sought to access, by virtue of its layout, use of language or other characteristics that make it specific to *a consumer* with a particular nationality, place of residence or *temporary location*, unless the *consumer* gives his or her explicit consent to such redirection.

*Where the trader allows the consumer to express a clear preference on a personal account, modifiable at any moment by the*

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*.

3. 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* or to *customers* in certain territories is necessary in order *to ensure compliance* with a legal requirement in Union law or in the laws of Member *States* in accordance with Union law.

4. *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 paragraph 4, the trader shall provide a clear justification. That justification shall be given in the language of the online interface that the customer originally sought to access.*

*customer, the trader shall be allowed to routinely redirect that consumer to a specific landing page, on condition that that landing page allows clear and simple access to the online interface that the consumer initially sought to access.*

In the event of such redirection with the *consumer's* explicit consent, the version of the online interface *which the consumer initially sought to access* shall remain easily accessible *by the consumer*.

3. The prohibitions set out in paragraphs 1 and 2 shall not apply where the blocking *or* limitation of access or *the* redirection with respect to certain *groups of consumers* or to *consumers* in certain territories is necessary in order *for a trader or online marketplace to comply* with a legal requirement in Union law or in the laws of *a* Member *State* in accordance with Union law. *The trader or the online marketplace shall justify clearly and explicitly the reasons for compliance in the language of the online interface that the consumer initially sought to access.*

*(In relation to consumer/trader, the replacement of “their” with “his or her” applies throughout the text. Adopting this amendment will necessitate corresponding changes throughout.)*

## Amendment 54

### Proposal for a regulation Article 4



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** those goods **are not delivered cross-border** to the Member State of **the customer by the trader or on his or her behalf**;

(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 services**, other than **those covered by point (b)**, and those services are supplied to the **customer in the premises of the trader or** in a physical location **where** the trader operates, in a Member State other than that **of which the customer is a national or** in which the **customer** has **the** place of residence **or the place of establishment**.

Article 4

Access to goods or services

1. **A trader** shall not apply different general conditions of access to **his or her** goods or services, for reasons related to the nationality, place of residence or **temporary location** of the **consumer**, **where the consumer seeks to**:

(a) **buy goods and** the trader **offers delivery of** those goods **to a location in a Member State other than** the Member State of **residence of the consumer**, **including the option to collect the goods at a location to be agreed upon between the consumer and the trader**;

(b) **receive** electronically supplied services **from the trader**, 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;

**(ba) receive 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 in respect of which the trader has the requisite rights or has acquired the licence to use such content for the relevant territories**;

(c) **receive services from the trader** other than **electronically supplied services** and those services are supplied to the **consumer** in a physical location **in which** the trader operates in a Member State other than that in which the **consumer** has **his or her** place of residence.

**1a. The prohibition set out in paragraph 1 shall not prevent a trader from applying different general conditions of access in different Member States or within a single Member State which are offered to consumers in a specific territory or to a**

*specific group of consumers provided that these are not applied for reasons related to nationality, place of residence or temporary location.*

***1b. The prohibition set out in paragraph 1 does not entail an obligation for a trader to comply with national legal requirements or to inform customers about these requirements when a trader does not pursue or direct his or her activities to the specific Member State.***

2. The prohibition set out in point (b) of paragraph 1 shall not apply to traders that are exempted from VAT on the basis of the provisions of Chapter 1 of Title XII of Directive 26/112/EC.

3. The prohibition set out in paragraph 1 shall not apply in so far as a specific provision laid down in Union law or in the laws of Member ***States*** in accordance with Union law prevents the trader from selling the goods or providing the services to certain ***customers or to customers in certain territories***

With respect to sales of books, the prohibition set out in paragraph 1 shall ***not preclude traders from applying different prices to customers in certain territories in so far as they are required to do so under the laws of Member States*** in accordance with Union law.

2. The prohibition set out in point (b) of paragraph 1 shall not apply to traders that are exempted from VAT on the basis of the provisions of Chapter 1 of Title XII of Directive 26/112/EC.

3. The prohibition set out in paragraph 1 shall not apply in so far as a specific provision laid down in Union law or in the laws of ***a Member State*** in accordance with Union law prevents the trader from selling the goods or providing the services ***concerned*** to certain ***groups of consumers*** or to consumers in certain territories.

With respect to sales of books, ***including their electronic version***, the prohibition set out in paragraph 1 shall ***be without prejudice to specific legislation regarding pricing in their*** Member States in accordance with Union law.

## Amendment 55

### Proposal for a regulation Article 5

*Text proposed by the Commission*

#### Article 5

Non-discrimination for reasons related to payment

1. ***Traders*** shall not, for reasons related to the nationality, place of residence or ***place of establishment*** of the ***customer***, the location of the payment account, the place

*Amendment*

#### Article 5

Non-discrimination for reasons related to payment

1. ***A trader*** shall not, for reasons related to the nationality, place of residence or ***temporary location*** of the ***consumer***, the location of the payment account, the place

of establishment of the payment service provider or the place of issue of the payment instrument within the Union, apply different conditions *of payment for any sales of goods or provision of services*, where:

- (a) *those payments are* made through electronic *transactions* by credit transfer, direct debit or a card-based payment instrument within the same payment brand;
- (b) *the payee can request strong customer authentication by the payer* pursuant to *the* Directive (EU) 2015/2366; and
- (c) the *payments are* in a currency that the *payee* accepts.

2. The prohibition set out in paragraph 1 shall not preclude *traders' possibility to request charges* for the use of a card-based payment instrument for which *interchanges* fees are not regulated under Chapter II of Regulation (EU) 2015/751 *and* for *those* payment services to which Regulation (EU) No 260/2012 does not apply. Those charges shall not exceed the costs borne by the trader for the use of the payment instrument.

of establishment of the payment service provider or the place of issue of the payment instrument within the Union, apply different conditions *for a payment transaction*, where:

- (a) *that payment transaction is* made through *an* electronic *transaction* by credit transfer, direct debit or a card-based payment instrument within the same payment brand *and category*;
- (b) authentication *requirements are fulfilled* pursuant to Directive (EU) 2015/2366; and
- (c) the *payment transaction is* in a currency that the *trader* accepts.

*1a. Where justified by objective reasons, the prohibition set out in paragraph 1 shall not preclude the trader's right to withhold the goods or the provision of the service concerned until the trader has received confirmation that the payment transaction has been properly initiated.*

2. The prohibition set out in paragraph 1 shall not preclude *a trader from charging* for the use of a card-based payment instrument for which *interchange* fees are not regulated under Chapter II of Regulation (EU) 2015/751 *or* for payment services to which Regulation (EU) No 260/2012 does not apply, *unless the Member State in which the trader is established has prohibited or limited such charges pursuant to Article 62(5) of Directive 2015/2366*. Those charges shall not exceed the *direct* costs borne by the trader for the

*2a. The prohibition set out in paragraph 1 shall not preclude the trader's option to request, in case of direct debits, advance payment via SEPA credit transfer before goods are dispatched or before the service is provided, where they have no other way of ensuring that the purchaser will meet his or her payment obligation.*

## Amendment 56

### Proposal for a regulation Article 6 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

***Provisions of*** agreements imposing on traders obligations, in respect of passive sales ***within the meaning of Regulation (EU) 330/2010***, to act in violation of this Regulation shall be automatically ***null and*** void.

## Amendment 57

### Proposal for a regulation Article 7 – title

*Text proposed by the Commission*

Enforcement ***by Member State authorities***

*Amendment*

Enforcement

## Amendment 58

### Proposal for a regulation Article 7 – paragraph 1

*Text proposed by the Commission*

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 this Regulation.***

*Amendment*

1. Each Member State shall designate a body or bodies responsible for the ***adequate and effective*** enforcement of this Regulation. ***Without prejudice to other information and cooperation mechanisms, those bodies shall be responsible for ensuring cross-border cooperation with bodies in other Member States through the appropriate means.***

## Amendment 59

### Proposal for a regulation Article 7 – paragraph 2

*Text proposed by the Commission*

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.

*Amendment*

2. Member States shall lay down the rules on the **measures** applicable for infringements of the provisions of this Regulation and shall ensure that they are implemented. The **measures** provided for shall be effective, proportionate and dissuasive.

**Amendment 60**

**Proposal for a regulation**

**Article 7 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2 a. The measures referred to in paragraph 2 shall be communicated to the Commission and made publically available on the Commission's website.**

**Amendment 61**

**Proposal for a regulation**

**Article 8 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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. **Each Member State shall designate a body or bodies responsible for that task.**

Each Member State shall **designate a body or bodies responsible** for providing practical assistance to consumers **in the event** of a dispute between a consumer and a trader arising from the application of this Regulation.

*Justification*

*Alignment of structure with Article 7(1)*

## Amendment 62

### Proposal for a regulation Article 8 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**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 assist those bodies in developing this model form.** **deleted**

#### *Justification*

*Unnecessary regulation as the model form would cover different infringement as laid down in this Regulation and could cover two different bodies.*

## Amendment 63

### Proposal for a regulation Article 9

*Text proposed by the Commission*

*Amendment*

#### Article 9

#### Article 9

##### Review clause

##### Review clause

1. By [date: **two** years after the entry into force of this Regulation] and every five years thereafter, the Commission shall report on the evaluation of this Regulation to the European Parliament, the Council and the European Economic and Social Committee. That report shall, where necessary, be accompanied by a proposal for an amendment of this Regulation, in light of legal, technical and economic developments.

2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing whether the **prohibition of Article 4(1)(b) should also apply 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**

1. By [date: **three** years after the entry into force of this Regulation] and every five years thereafter, the Commission shall report on the evaluation of this Regulation to the European Parliament, the Council and the European Economic and Social Committee. That report shall, where necessary, be accompanied by a proposal for an amendment of this Regulation, in light of legal, technical and economic developments.

2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing **the overall impact of this Regulation on the internal market and crossborder e-Commerce. In particular, the first in-depth evaluation shall assess** whether the **scope of this Regulation should be extended to cover additional sectors such**

*requisite rights for the relevant territories.*

*as the audio-visual, financial, transport, electronic communication or healthcare services sectors, taking due account of the particularities of each sector.*

#### **Amendment 64**

##### **Proposal for a regulation Article 10 – paragraph 1**

*Text proposed by the Commission*

1. In the Annex to Regulation (EC) No 2006/2004 the following point [number] is added: "[number] [full title of this Regulation] (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.*"

*Amendment*

1. In the Annex to Regulation (EC) No 2006/2004 the following point [number] is added: "[number] [full title of this Regulation] (OJ L XX, XX.XX.Year, p. X)".

#### **Amendment 65**

##### **Proposal for a regulation Article 11 – paragraph 3**

*Text proposed by the Commission*

*However, point (b) of Article 4(1) shall apply from 1 July 2018.*

*Amendment*

*deleted*

#### **Amendment 66**

##### **Proposal for a regulation Article 2 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

(ca) *'temporary location' means any physical presence of a consumer in a Member State in which he is not habitually resident;*