

# QUESTIONS AND ANSWERS RELATING TO THE REGULATION ON ADDRESSING UNJUSTIFIED GEO- BLOCKING AND OTHER FORMS OF DISCRIMINATION BASED ON CUSTOMERS' NATIONALITY, PLACE OF RESIDENCE OR PLACE OF ESTABLISHMENT WITHIN THE INTERNAL MARKET ("GEO-BLOCKING REGULATION")

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**This document is provided by the Commission services for information purposes only. It does not contain any authoritative interpretation of the Geo-blocking Regulation and it does not constitute a decision or position of the Commission. It is without prejudice to any such decision or position of the Commission and to the powers of the Court of Justice of the EU to interpret the Geo-blocking Regulation in accordance with the EU Treaties.**

## 1. General information

### *1.1. What is geo-blocking and what does the Geo-blocking Regulation change?*

Geo-blocking refers to practices used by online sellers that result in the denial of access to websites from other Member States. It also includes situations where access to a website is granted, but the customer from abroad is prevented from finalising the purchase or being asked to pay with a debit or credit card from a certain country. "Geo-discrimination" also takes place when buying goods and services off-line, e.g. when a consumer is physically present at the trader's location but is either prevented from accessing a product or service or being offered different conditions.

The Geo-blocking Regulation aims to provide for more opportunities to consumers and businesses within the EU's internal market. In particular, it addresses the problem of (potential) customers not being able to buy goods and services from traders located in a different Member State for reasons related to their nationality, place of residence or place of establishment, hence discriminating them when they try to access the best offers, prices or sales conditions compared to nationals or residents of the traders' Member State.

Consumers and businesses – especially small and medium-sized enterprises (SMEs) – show an increasing interest in shopping across the EU. 68 % of internet users in the EU shopped online in 2017. However, frequently traders still refuse, without any objective reason, to sell or supply to customers from another Member State or to offer equally advantageous prices in comparison with local clients. A [Commission survey](#) found that only 37% of websites allow customers shopping from another Member State to reach the final step up to the point just before pushing the order confirmation button. The Commission regularly receives complaints describing cases of different treatment due to the customer's nationality, place of residence or place of establishment. The problem equally affects consumers and businesses as end-users of goods and services and exists both in the online environment and in the physical world.

While the prohibition of discrimination is already established in the [Services Directive \(2006/123/EC\)](#), its application depends on a case-by-case assessment of the trader's practices. With the Regulation companies and consumers alike benefit from more legal certainty about those specific practices which cannot be justified in any event. The Regulation prevents traders from discriminating in the situations covered and thus provides legal certainty and improves enforceability.

### *1.2. What are the main elements of the Regulation?*

- **Sale of goods and services**

The Regulation defines in its Article 4 certain specific situations where there can be no justified reason for geo-blocking or other forms of discrimination based on nationality, residence or establishment. In these situations, customers from another Member State have the same access to goods and services as local customers. These situations are:

- o Sale of goods without delivery

- When a customer buys a good, such as electronics, clothes, sportswear or a book, which the trader does not deliver cross-border to the customer's Member State. Such customers from other Member States are entitled to delivery in the Member State of the trader in the same way as local customers.
  - *Example: A Belgian customer wishes to buy a camera and finds the best deal on a German website. The customer will be entitled to order the good and collect it at the trader's premises or organise delivery himself to his home.*
- o Sale of electronically supplied services
- When a customer wants to buy an electronically supplied service, such as cloud services, data warehousing or website hosting, from a trader established in another Member State. Such customers are entitled to do so in the same way as local customers are.
  - *Example: A Bulgarian consumer wishes to buy hosting services for her website from a Spanish company. She will have access to the service, can register and buy this service without having to pay additional fees compared to a Spanish consumer.*
- o Sale of services provided in a specific physical location
- When a customer buys a service which is supplied in the premises of the trader or in a physical location where the trader operates, where those premises or that location are in another Member State than in that of the customer. This category covers services such as concert tickets, rental of summer accommodation and car hire. In this situation, too, the customer is entitled to equal treatment.
  - *Example: An Italian family visits a French theme park and wishes to take advantage of a family discount on the price of the entry tickets. The discounted price will be available for the Italian family, just as it is for French families.*

In the above cases geo-blocking or other forms of geographically-based differential treatment are only possible in exceptional situations defined in the Regulation, that is, where an EU or national legal requirement obliges the trader to block access to the offered goods or services (e.g. a prohibition to sell alcohol to non-residents).

For online services related to non-audiovisual works protected by copyright, the non-discrimination provision – i.e. the obligation to allow foreign customers to access and benefit from the same offers as local customers – does not apply under the Regulation. However, the possibility of its extension to these services will be part of the review which is to be carried out two years after entry into force of the Regulation. However, other rules of the Regulation, such as those prohibiting the discriminatory blocking of access to online interfaces and re-routing without the customer's consent as well as discrimination for reasons related to payment, apply to these services already now.

- **Access to websites**

In its Article 3 the Regulation bans the blocking of access to websites and the re-routing without the customer's prior consent. This increases price transparency by allowing customers to access different national websites. This provision also applies to non-audiovisual electronically supplied services, such as e-books, music, games and software.



o *Example: An Irish customer wants to access an online clothing shop's Italian website. Even though she types in the URL of the Italian version, she gets redirected to the Irish version. After the entry into force of the Regulation such redirection will require the explicit consent of the customer and even if the customer gives consent to the redirection, the original version she sought to visit should remain accessible.*

- **Non-discrimination in payments**

While traders remain free to accept whatever payment means they want, the Regulation includes a specific provision (Article 5) on non-discrimination within the range of means of payment they accept. It covers situations where differential treatment is a result of the customer's nationality, place of residence or place of establishment, the location of the payment account, the place of establishment of the payment services provider or the place of issue of the payment instrument.

Differential treatment is prohibited if these three conditions are met:

- Payments are made through electronic transactions by credit transfer, direct debit or card-based payment instrument within the same brand and category;
- Authentication requirements are fulfilled, and;
- The payments are in a currency that the trader accepts.

This provision should be understood against the background of the [2012 Single Euro Payments Area Regulation \(SEPA\)](#), which foresees that when shopping abroad consumers can use their bank debit card to make a payment in Euro as they would in their home Member State.

### *1.3. How does the Regulation ensure the contractual freedom of companies?*

The Regulation does not introduce an obligation for companies to contract. Rather, it provides for an obligation to treat EU customers in the same manner when they are in the same situation, regardless of their nationality, place of residence or place of establishment.

In general there could be valid reasons for treating customers differently. That is why the Regulation focuses on certain specific, carefully circumscribed situations where customers cannot be discriminated against on the grounds of where they come from or where they live. The possibility of traders not to sell in light of unrelated, objective reasons, for example if a particular good is out of stock, remain unchanged.

The freedom to conduct a business, which includes the freedom of contract, is a fundamental right enshrined in Article 16 of the EU Charter of Fundamental Rights. As stated by the Court of Justice, that right is not absolute, however; it has to be considered in relation to its social function and other fundamental rights and principles. In light of the Geo-blocking Regulation's policy objective of realising the EU's single market and ensuring that EU customers who are objectively in the same situations are treated alike, a limited restriction of the freedom to conduct a business is considered necessary and proportionate.

#### *1.4. How does the Regulation avoid imposing additional regulatory burden on SMEs?*

Businesses normally want to sell their goods and services. The objective is, generally speaking, to allow them to expand their markets and attract more customers. The Regulation has been developed with special attention to the need to limit the potential regulatory and administrative burden on traders. Options that were considered too burdensome were rejected as part of the impact assessment carried out by the Commission before proposing the Regulation. The main burden for companies under the Regulation is to ensure access to websites and other online interfaces and to prevent re-routing. However, any costs associated with compliance with those rules are limited, one-off costs and are considered justified and proportionate to the objective pursued.

Compliance with value-added tax (VAT) obligations is often a particular concern for SMEs, especially in a cross-border context. The Regulation therefore contains balanced provisions where VAT compliance is taken into account.

In addition, SMEs also benefit from the Regulation when purchasing goods or services, i.e. when they themselves are acting as customers (for the sole purpose of end use). The Regulation grants businesses the same rights as those given to consumers, helping entrepreneurs that want to buy goods and services from traders from other Member States.

#### *1.5. Why can't these problems be addressed by better enforcement of existing rules?*

While the prohibition of discrimination is already established in the [Services Directive](#), it can sometimes be difficult to put it into practice. In particular, [Article 20\(2\) of the Services Directive](#) prohibits all types of unjustified territorial restrictions, but is formulated in general terms and allows for differential treatment of customers when justified by objective criteria. In its recitals the Directive contains a list of such possible objective criteria. As a consequence, a case-by-case assessment is required each time and it has therefore proven difficult to apply and enforce this prohibition in practice, creating uncertainty and enforcement difficulties for consumers, traders and national enforcement authorities.

Despite efforts to remedy these problems, for example with [the Commission's 2012 Guidelines on how to interpret objective criteria in practice](#), the existing rules are still perceived as ambiguous and complicated to apply and enforce.

Recurring complaints from consumers coupled to the fact that, to the knowledge of the Commission, thus far no trader has ever been sanctioned for infringing the non-discrimination rule of Article 20(2) of the Services Directive underline the need to clarify its application and strengthen its application and enforcement by means of a new legal instrument: the Geo-blocking Regulation.

## **2. Scope of the Regulation (Article 1)**

### *2.1. Does the Regulation cover both online and offline sales?*

The Regulation sets out certain situations where differential treatment cannot be justified. These situations include both online and offline sales of goods and services, as well as cases where these two channels are integrated (omni-channel).

## *2.2. Does the Regulation apply to domestic sales? Which are the purely internal situations where this Regulation does not apply?*

The Regulation does not apply where all the elements relevant to the transaction at stake are confined within one single Member State (that is, so-called 'purely internal situations'). This means that the Regulation applies when the transaction has a cross-border element. One could think of the nationality, the place of residence or the place of establishment of the customer or of the trader, the place of execution, the means of payment used in the transaction or the use of an online interface. In contrast, it does not mean that the delivery of a good or service should necessarily take place in another Member State than the one where the trader is established.

## *2.3. Which sectors are not covered by the Regulation?*

Pursuant to its Article 1, the Regulation does not cover activities listed in Article 2(2) of the Services Directive, which are excluded from the scope of that Directive. This includes the following:

- **Services in the field of transport.** These services are excluded from the Regulation especially considering that existing EU transport legislation already explicitly prohibits discrimination of the type at issue here for three types of transport: air flight tickets, bus and coach transport and waterborne transport. As part of the ongoing review of the rules for rail passenger rights, the Commission has introduced in its recast proposal for a Regulation on rail passengers' rights and obligations a similar prohibition.
- **Retail financial services.** These services are excluded from the Regulation. However, the Regulation does cover unjustified differential treatment relating to the use of certain payment means, notably credit cards and direct debit cards.
- **Audiovisual services.** Facilitating the access to audiovisual services across borders is part of other initiatives under the Digital Single Market Strategy of the Commission. In 2016 the Commission presented a proposal for updated EU rules for audiovisual media that would notably strengthen the promotion of European works ([press release](#)), which is currently still under negotiation. As part of the ongoing modernisation of the EU copyright framework, new rules have been adopted on portability of online content services which will allow Europeans to travel with the digital content – such as streaming or downloads of films, sports broadcasts, music, e-books and games – that they have subscribed to at home ([press release](#)). Other initiatives related to the modernisation of EU copyright rules are currently being negotiated, which aim at providing more online content across borders.

As part of its Digital Single Market Strategy, the Commission is working to allow Europeans to have better access to digital goods and services as well as to a wider content across Europe. To achieve this goal, the Commission has proposed different initiatives to address the specificities of different types of goods, services and content. For example, in the [digital contracts initiatives](#) the Commission has proposed to fully harmonise the main mandatory consumer rights applicable to the supply of digital content and sales of goods. Once adopted, these instruments should reduce the costs resulting from differences in contract law, create legal certainty for businesses and help consumers make the most of shopping across the EU. Recently new rules for the reduction of VAT-related administrative burden of cross-border transactions were also adopted.

#### *2.4. Does the Regulation also apply for the sales of flight tickets?*

No, this Regulation does not apply to services in the field of transport. However, as noted above, existing EU transport legislation already prohibits discrimination in many cases. For example, Regulation 1008/2008 contains prohibitions of discrimination based on the nationality or the place of residence of the customer in the area of air services. Additionally, general principles of the Treaty on the Functioning of the European Union (TFEU) also prohibit discrimination based on nationality, including indirect forms based on place of residence or place of establishment.

#### *2.5. What's the territorial scope of the Regulation?*

The Regulation applies to all traders offering their goods or services to consumers in the EU, regardless of whether they are established in the EU or in a third country (i.e. a non-EU Member State). Therefore, traders established in third countries who are operating in the EU are in principle subject to this Regulation.

#### *2.6. Does the Regulation benefit all customers in Europe? What about non-European customers in Europe?*

Within the meaning of the Regulation, the term 'customer' means a consumer who is a national of, or a resident in, a Member State, or an undertaking which is established in a Member State, and receives a service or purchases a good, or seeks to do so, within the EU, for the sole purpose of end use.

In other words, the Regulation applies to the provision of goods or services to EU nationals or residents in all Member States. Consequently, non-EU nationals who have their residence in the EU will also benefit from the Regulation within the EU.

#### *2.7. Does this Regulation apply to Switzerland?*

Switzerland is a third country, i.e. not a Member State of the EU. The rules of EU law apply to Switzerland only on the basis of bilateral agreements. The Geo-blocking Regulation is therefore not directly applicable in Switzerland. This is without prejudice to the general non-discrimination obligations concerning natural persons applicable to EU-Switzerland relations pursuant to existing international arrangements. However, as explained above, the Regulation can also apply to traders established in third countries.

#### *2.8. Does this Regulation apply to individuals who sell occasionally second-hand goods online?*

The Regulation applies to traders. As defined in the Regulation, 'trader' means any natural or legal person who is acting for purposes relating to his or her trade, business, craft or profession. Therefore, a person who sells occasionally second-hand goods online, outside his or her profession or trade, does not fall within the scope of this Regulation.

*2.9. Is the Regulation only applicable to B2C situations or also to B2B situations?*

The rules of the Geo-blocking Regulation apply in principle to both business-to-consumer (B2C) and to business-to-business (B2B) transactions, to the extent that the latter take place on the basis of general conditions of access (hence they are not individually negotiated) and the transaction is for the sole purpose of end use (hence made without the intention to re-sell, transform, process, rent or subcontract).

*2.10. How can a trader identify whether a purchase is made for the sole purpose of end use?*

The Regulation does not apply when the goods or services purchased for other reasons than for the sole purpose of end use, that is, when they are meant to be subsequently resold, transformed, processed, rented or subcontracted. The Regulation does not mandate specific modalities to identify *ex ante* whether the transaction is for the sole purpose of end use. In this regard, the Regulation states that it is without prejudice to non-discriminatory practices of traders limiting transactions or repetitive transactions to ensure that the goods or service are bought for that purpose.

*2.11. To what extent are online marketplaces covered by the obligations of this Regulation?*

On-line marketplaces are subject to the provisions of the Geo-blocking Regulation when they act as traders. That is, if and when they fulfill all the requirements for them to be considered as a 'trader' within the meaning of the Regulation, as explained above.

In certain cases online marketplaces might not act as traders themselves, but rather act in the name or on behalf of another company which qualifies as a trader. In those cases it is that other company which is subject to the rules of the Regulation, and not the online market place directly.

*2.12. In all situations which are not covered by this Regulation, are traders allowed to discriminate?*

No. The prohibition of direct or indirect discrimination based on nationality is a fundamental principle of EU law. In particular, in situations not covered by this Regulation, Article 20(2) of the Services Directive can be applicable. According to this provision, traders may only apply differences of treatment based on nationality or place of residence if this is justified by objective criteria. In some cases sector-specific legislation (for instance in the field of transport, or health) may also apply which addresses this issue. In addition, the Regulation leaves the rules of the TFEU unaffected, including its rules on non-discrimination.

*2.13. What are in practice electronically supplied services?*

These services include for instance cloud services, data warehousing services, web hosting and the provision of firewalls, use of search engines and Internet directories.

*2.14. Does a trader need to create specific "unbundled" offers for nationals or residents of another Member State where the trader provides goods or services combined with services which do not fall within the scope of the Regulation?*

No, a trader is not required to "unbundle" goods or services in order to comply with the Regulation. But in such a case the whole bundle will be subject to the rules of the Regulation, if one particular aspect thereof is covered. If the trader unbundles the goods or services and they fall within the scope of the Regulation, he or she is free to set the price and conditions for such goods or services, provided he or she does not apply discriminatory conditions based on nationality, residence or establishment.

*2.15. To what extent are non-audiovisual copyright protected content services included in the scope of this Regulation?*

The provision of (non-audiovisual) copyright protected content services (such as e-books, on-line music, software and videogames) is not subject to the Regulation's prohibition of applying different general conditions of access for reasons related to a customer's nationality, residence or establishment, including by refusing to provide such services to customers from other Member States in the specific cases listed in Article 4.

However, the provision of these services remains in principle subject to the general non-discrimination obligation laid down in Article 20(2) of the Services Directive, which is subject to a case-by-case assessment on the existence of objective justifications for the differential treatment (including reasons related to copyright's limitations).

These services, moreover, remain subject for instance to the Geo-blocking Regulation's prohibition to block or limit access to on-line interfaces on the basis of the nationality, residence or establishment of the customer. This means that a trader providing these services cannot prevent its clients to access different versions of its website, marketplace or app store, or reroute them without their explicit consent, on the basis of criteria based on nationality, residence or establishment of the customer (including indirect criteria such as IP address or payment details of the customer).

Moreover, where cross-border provision of these services takes place, notwithstanding their exclusion from Article 4 of the Regulation, the trader is prevented from discriminating the electronic payment means on the basis of their "nationality", i.e. because a credit or debit card of an accepted category or brand is however issued in another Member State or because a direct debit or credit transfer is performed through a bank from another Member State (provided the currency used is accepted by the trader).

The Regulation prescribes a review within 2 years after its entry into force, focused on assessing the scope of the Regulation, including with regard to the abovementioned limitations on the application of Article 4 of the Regulation to these kinds of services.

*2.16. Is the on-line sale of physical books, DVDs and CDs covered by the Regulation?*

Yes, the sale of these goods is covered by the provisions of the Regulation, including the prohibition to apply different general conditions of access in view of the nationality, residence or establishment of the customer, where the customer seeks to buy those goods and

they are delivered in a Member State where the trader offers delivery or pick up option pursuant to its general conditions of access.

*2.17. Is the provision of public utilities, such as gas, electricity or water, covered by this Regulation?*

The Regulation contains no particular exclusion for the provision of public utilities. Such provision is therefore covered, provided that the requirements of the Regulation are met, such as that the person providing them is considered a 'trader' and that, where it comes to the non-discrimination provision of Article 4, the provision takes place in one of the situations described there.

### **3. Access to on-line interfaces (Article 3)**

*3.1. Do I have the right to have access to different language versions or to all offers of goods or services shown on a given website?*

Yes, the customer has in principle the right to have access to all versions and items published on the website, unless this is prevented by specific legislation applicable to the trader. On the other hand, the Regulation does not contain an obligation for traders to specifically set-up websites or sections of it in certain particular languages.

*3.2. Does the trader's on-line interface need to be changed to ensure compliance?*

The Regulation does not impose an obligation on traders to adapt their on-line interfaces to all different formats and coordinates applicable across the EU. However, those interfaces may not be designed in a way that would, in practice, not allow customers from other Member States to easily complete their orders.

*3.3. Should the explicit consent to be redirected be given every time in order to comply with the Regulation?*

The trader can still redirect a customer to a specific version of his or her website where the customer has explicitly given his or her consent. Such consent need not necessarily be given every time the customer visits the same website, but the customer does remain free to withdraw his consent at any point in time and the version of the website which the customer initially sought to access must remain easily accessible.

*3.4. What are the legal requirements that could justify limitations to access to on-line interfaces? Should the trader ensure compliance with all legal requirements potentially applicable in all Member States, given that its on-line interface is accessible from abroad? What are the explanations that a trader shall provide in case of such limitation?*

The obligation to grant access to their on-line interface provided for in the Regulation does not mean that traders need no longer comply with requirements provided in EU law, or in national law in compliance with EU law, to which they are subject to as a consequence of operating in a given Member State. In such cases the trader needs to provide a clear and specific explanation of the reasons for not providing access, in the language of the online interface to which the customer sought access.

*3.5. Do the rules on access to online interfaces mean that traders are prevented from providing tailored offers?*

Certain traders operate different versions of their online interfaces, or part thereof, targeting customers from different Member States. This remains possible in principle. However, redirecting customers from one version of the online interface to another version on a discriminatory basis and without their explicit consent is prohibited. The different version of the website might entail different layout, another language or other characteristics that make it, or part of thereof, specific to customers with a particular nationality, place of residence or place of establishment.

*3.6. Can a trader redirect the customer from one country-specific website to another?*

Article 3 of the Regulation on access to online interfaces, such as websites, applies when a trader redirects a customer to a version of the trader's website that is different from the online interface to which the customer initially sought access, for reasons related to the customer's nationality, place of residence or place of establishment.

Therefore, where the redirection to another website, for instance a country-specific one, takes place because of those reasons, the Regulation will apply and such redirection can only occur either with explicit consent or because of a specific legal obligation upon the trader to do so. However, as noted above, the Regulation does not apply in purely internal situations.

*3.7. How should the consent for re-routing be stored (e.g. cookies)?*

The Regulation does not specify how the explicit consent of a customer for such rerouting is to be stored by the trader, in cases where the customer has given his or her explicit consent and the trader wishes to remember it in case the customer wishes to visit the same website again in the future.

However, where giving consent involves the processing of personal data, EU data protection law applies, notably the General Data Protection Regulation (2016/679) and when remembering such consent entails storing of information, or the gaining of access to information already stored, in the terminal equipment, the e-Privacy Directive (2002/58).

*3.8. Will having a website in a specific language mean that the trader is targeting that market?*

The Regulation does not affect the rights and obligations established under the Rome I (593/2008) and Brussels I (215/2012) Regulations, including the rules that those Regulations contain as regards traders directing their activities to another Member State. The Geo-blocking Regulation provides in this regard that mere compliance with its rules does not mean that the trader directs his or her activities to consumers in another Member State.

Therefore, whether the use of a specific language on a website means that the trader is directing his or her activities to customers in a given Member State will have to be decided on the basis of the Rome I and Brussels I Regulations and the relevant case-law relating to those Regulations.



*3.9. To what extent are purely informative websites subject to the restriction on rerouting?*

The Regulation specifies that 'online interface' means any software, including websites and apps, operated by or on behalf of the trader which serve to give customers access to the trader's goods or services with a view to engaging in a transaction with respect to these goods or services.

Therefore, it will have to be determined in each case whether a given website serves those purposes or not. If so, it falls in principle within the scope of the Regulation and its Article 3 on access to websites therefore applies, including its rules on rerouting.

**4. Non-discrimination in access to goods or services (Article 4)**

*4.1. Does the Regulation impose an obligation to sell and deliver across the EU?*

No. The Regulation does not create an obligation on traders to sell, but it contains a prohibition for them to discriminate on the basis of the customer's nationality, residence or establishment when they are selling.

The Regulation does not introduce an obligation to deliver across the EU. It defines specific situations where customers cannot be denied access to the goods or services of the trader for reasons relating to the customer's nationality, residence or establishment.

*4.2. Does the Regulation impose an obligation to set up pick-up points?*

No, the Regulation does not impose on traders an obligation to set-up pick-up points for their goods. However, where this option is available in the trader's general conditions of access, it should also be accessible to customers from other Member States, regardless of their nationality, residence or establishment.

*4.3. Are traders allowed to ask consumers for extra payments if they undertake to organize the delivery of the sold goods?*

Offering delivery options for a purchased good or service constitutes a service. Traders are in principle free to offer the services they wish to offer to their customers. However, if a trader decides to offer delivery services in specific Member States or in specific locations in Member States by stating that in his or her general conditions of access, he or she cannot discriminate customers who wish to benefit from those delivery services based on their nationality, place of residence or place of establishment.

*4.4. In case the consumer organizes the delivery, is it clear what the liability rules are in case of damage while the good is with the carrier (passing of risk)? Also when does the period of 14 days to withdraw from the contract expire?*

The Regulation does not contain any specific rules on liability in such cases. That will therefore have to be assessed in light of the other rules that may apply, such as national rules transposing the Consumer Rights Directive (2011/83) and in particular Articles 9 and 20 of that Directive. The Regulation leaves that Directive unaffected.

*4.5. Does the Regulation oblige traders to physically move wherever in Europe to provide services at the customers' location?*

No, the Regulation contains no such obligation for traders to move.

*4.6. Does the Regulation regulate prices?*

No. The purpose of the Geo-blocking Regulation is to tackle discrimination of EU customers, currently hampering the potential for cross-border trade and preventing the full use of the Single Market. The Regulation does not regulate or harmonise price levels as such.

Traders thus remain free to set different prices for instance on websites targeting different customer groups. However, these websites should be accessible to all EU customers and - in the specific situations described above – EU customers should be able to purchase goods or services under the same conditions as nationals of the Member State of the trader.

The Regulation also does not address dynamic pricing, where traders adapt their offers over time, depending on factors unrelated to nationality, residence or establishment.

*4.7. Is it possible for a trader to differentiate his or her offers across different points of sales or websites in the EU, including with different delivery options?*

The right of a trader to in principle freely design and carry out his or her marketing activities, prices and websites across the EU is not affected by the Regulation. In the situations covered, the Regulation essentially obliges traders to treat EU customers in the same manner when they are in the same situation (i.e. where they are willing to accept the general conditions of access, including delivery options, provided for in a given website or point of sale), regardless of their nationality, place of residence or place of establishment.

That means that traders can continue targeting specific groups of customers, as long as they do so unrelated to nationality, residence or establishment criteria (such as offers for young people or for consumers as opposed to professionals).

*4.8. To what extent does a trader fall within the scope of the Regulation when he or she sells with a delivery option only in his home Member State? For instance, a Belgian customer wants to buy a refrigerator on a German website of a trader that only delivers to addresses in Germany. Is it true that in such a case the Belgian customer cannot claim the right to collect the good at the location of the trader or to ensure that it is delivered to his home?*

The trader remains free in principle to define the geographical area in which he or she provides delivery services. However, the Regulation does not allow such a trader to discriminate a foreign customer wanting to buy a good under the same conditions as a local (the so-called "shop-like-a-local" scenario).

This means, in the example mentioned, that if the Belgian customer wants to pick up the good at the trader's premises or at any other German delivery address served by the trader, the trader cannot discriminate such customer in view of his or her Belgian nationality or of the fact that the customer resides or is established in Belgium. However, the Belgian customer cannot require the German trader to deliver the good in Belgium if this is not provided for in

the trader's general conditions of access. In addition, according to the Regulation, the trader is not allowed to prevent access to its German website (unless the trader is legally required to do so), hence the Belgian customer must have access to it as well.

*4.9. Does the Regulation require traders to register in each Member State where consumers wish to buy a good or service under the rules of the Regulation? For instance, in the abovementioned example, is the German trader considered to be selling into Belgium and does he or she therefore have to be registered in Belgium?*

No, under the Regulation the trader does not need to be registered in all Member States where consumers might show interest in buying his or her goods, or actually buy them. The Regulation explicitly clarifies that if the trader just complies with obligations of the Regulation, and therefore only ensures access to his or her website and the possibility to complete the purchase on a non-discriminatory basis, this fact cannot be considered as such as implying that the trader is directing his or her activities to another Member State. As a consequence, the Regulation itself neither contains nor implies an obligation to register.

*4.10. In some cases local taxes are used to subsidise services provision, e.g. entrance to local museums or swimming pools. Would this be prohibited under this Regulation?*

The Regulation is without prejudice to rules applicable to the field of taxation and is addressed to traders. It therefore does not contain any rules on the use of local taxes as such. It consequently does not prohibit the use of local taxes to subsidise certain activities such as the ones mentioned in the question.

However, where these activities constitute the provision of a service and all requirements for the applicability of the Regulation are met (the situation at hand is not a purely internal situation, the service is not excluded from its scope, the provider of the services qualifies as a trader, one of the specific situations described in the Regulation applies), the prohibition of discrimination set out therein will apply to the service provision in question. That the service provision might be subsidised through local taxes does not alter that. At the same time, Recital 27 of the Regulation indicates that the application of differentiated conditions of access is not precluded for certain reasons unrelated to nationality, place of residence or place of establishment, including contributions made to the trader.

*4.11. To what extent are "public services" or elements of terms and conditions which are subject to certain specific legal requirements covered by this Regulation?*

The Regulation contains no specific exceptions for "public services". However, non-economic services of general interest are expressly excluded from its scope.

Moreover, the Regulation only applies when all requirements for its applicability are met. Accordingly, the Regulation applies for instance only to services provided by 'traders'. Pursuant to the definition of that term, it does not matter whether the service provider (when it is a legal person) is privately or publicly owned. However, it does matter whether or not the service provider is acting for purposes relating to his or her trade, business, craft or profession; if not, it is not a trader and the Regulation does not apply to the activities concerned.

As regards specific legal requirements laid down in Union law or in national law in compliance with Union law, as noted above, Article 3 on access to online interfaces does not apply to the extent that the access restriction follows from a legal requirement to which the trader is subject. The same goes for the non-discrimination rules laid down in Article 4.

4.12. *What is the impact of business models that rely on localised commercials for subsidises selling price (for example traders selling tablets with pre-installed advertising targeting users in a specific Member States)?*

It is for each trader to determine what the impact of the Regulation is on their respective business models. That said, it can be noted that if a trader's activity falls within the scope of the Regulation, consumers cannot be prevented from buying the good or service in question for discriminatory reasons. For example, a Spanish consumer cannot be denied the right to buy a tablet from a German trader which that consumer picks up in Germany, where such pick-up option is available to German consumers. But the trader remains free in principle to define the geographical area where the goods are delivered or can be picked-up.

4.13. *What are the non-contractual national legal requirements mentioned in Article 4(3) of the Regulation and what does this provision mean?*

Article 4(3) of the Regulation refers to those legal requirements which do not derive from the contractual relationship between the customer and the trader, but which rather are imposed by the Member State of the customer and which relate to the goods or services in question, such as labelling requirements or sector-specific requirements. Article 4(3) makes it clear that mere compliance with the Regulation does not, in itself, entail an obligation for the trader concerned to comply with such legal requirements.

4.14. *Is a trader liable when he/she sells goods or provide services to a customer from another Member State that may not be legal to sell or provide in the latter's Member State?*

The Regulation does not directly affect national rules establishing that the sale of some goods or the provision of some services might not be legal in the Member State concerned. It therefore does not regulate the liability of traders in respect of such rules either.

The Regulation does specify however that the prohibition of discrimination laid down in its Article 4(1) does not apply in so far as such national rules prevent the trader from selling the goods or providing the services to certain customers or to customers in certain territories, provided that the national rules are in compliance with EU law. The same goes in so far as there are rules of EU law that prevent a trader from doing so. Consequently, that prohibition does not mean that traders are no longer bound by EU or national rules of this kind.

As noted above, the Regulation further clarifies that mere compliance with that prohibition of discrimination does not mean, in itself, that the trader is under an obligation to comply with non-contractual national legal requirements relating to the respective goods or services or to inform customers about those requirements (Article 4(3) of the Regulation).

4.15. *Are restrictions on seasonal promotions affected by this Regulation?*

The Regulation does not contain any specific rules on seasonal promotions or on restrictions relating thereto. Such promotions are therefore subject to the "normal" non-discrimination rules of the Regulation, where the situation at issue falls within their scope.

4.16. *Can traders have a sale, promotion or other type of price campaign on only one of their e-commerce websites?*

The Regulation does not affect the traders' freedom to organise their commercial policy, as long as they comply with the non-discrimination rules set out therein. Neither does the Regulation preclude the freedom of traders to offer, on a non-discriminatory basis, different conditions, including different net sale prices, in different points of sale, such as shops and websites, or to make specific offers only to a specific territory within a Member State.

Therefore, under the Regulation traders are free to have sales, promotions or other types of price campaigns on their selected e-commerce websites, as long as they act in a non-discriminatory way.

4.17. *Does this Regulation harmonise the VAT rates applicable to sales?*

No. The Regulation is without prejudice to the rules applicable in the field of taxation. Moreover, the concept of 'general conditions of access' expressly covers, in respect of prices, net sale prices only.

4.18. *Must a trader comply with price-fixing legislation on books applicable in the Member State of the customer?*

The non-discrimination rules of Article 4 do not prevent traders from applying different prices for the sale of books to customers in certain territories, in so far as they are required to do so under the laws of Member States in accordance with EU law.

Therefore, where a situation is covered by Article 4 of the Regulation and the trader is subject to national legislation of this kind, he or she cannot invoke Article 4 to argue that such legislation no longer applies. The trader thus remains bound by such legislation, provided that it is in accordance with EU law.

4.19. *Does the Regulation require microenterprises exempted from VAT registration in their Member State to register in other Member States?*

Compliance with VAT obligations is a particular concern for SMEs, especially in a cross-border context. The importance of avoiding overburdening small businesses is reflected in the Regulation. In particular, the Regulation specifically exempts from the non-discrimination rules of Article 4 traders that fall under a national exemption VAT threshold from the need to register in order to account for VAT of other Member States in order to sell electronically provided services.

4.20. *Will traders have to comply with consumer protection law of other Member States?*

The rules on applicable consumer protection law and jurisdiction of courts are regulated by the Rome I and Brussels I Regulations. The Geo-blocking Regulation does not amend or overwrite these rules. It is therefore to be determined in light of the Rome I and Brussels I Regulations what the applicable consumer protection law is and which courts are competent. That will mainly depend on the question whether or not the trader is directing his or her activities to another Member State. In that regard, the Geo-blocking Regulation clarifies that mere compliance with the rules set out therein does not mean that the trader directs his or her activities to another Member State.

4.21. *Are consumers allowed to demand, on the basis of the Regulation, user manuals/instructions and other product information in their language and accessories suited for their specific market (e.g. plugs, adaptors)?*

No, the Regulation itself does not oblige traders to adapt their goods to the needs of another national market, nor to provide user manuals, instructions and other product information in a particular language. At the same time, it does not prevent traders from doing so, nor from providing after-sales assistance.

The Regulation leaves other rules of EU law, to which the trader may be subject and which might contain relevant consumer protection requirements of this kind, unaffected. For instance, the Consumer Rights Directive allows Member States to maintain or introduce language requirements regarding contractual information.

In accordance with the relevant rules of EU law (notably the Rome I Regulation on the law applicable to contractual obligations (593/2008)), traders are subject to such consumer protection requirements which might apply in the Member State of the consumers concerned when they are directing their activities to that Member State. In this regard, the Regulation clarifies that a trader is not considered to be directing his or her activities to another Member State on the mere ground that he or she provides information and assistance after the conclusion of a contract that has resulted from the trader's compliance with the Regulation.

4.22. *How does the Regulation impact consumers' rights to remedies in case the good sold was defective?*

The Regulation does not impact the consumers' rights in such cases. The Regulation is essentially concerned with ensuring cross-border access to goods and services on a non-discriminatory basis in the situations covered. It does not contain any rules on remedies for instance in case the good in question later turns out to be defective.

As noted above, that does not mean however that there may not be other rules of EU law that apply and that grant consumers certain rights in such cases. In addition to the Consumer Rights Directive, mentioned above, one could think in particular of the Consumer Sales and Guarantees Directive (99/44/EC), which the Regulation also leaves unaffected. Under that latter Directive, the seller is liable to the consumer for any lack of conformity which exists at the time the goods were delivered and the consumer shall be entitled to have the goods brought into conformity free of charge, choosing either repair or replacement, or failing this,

to have the price reduced or the contract rescinded. The seller's obligation to provide repair or replacement free of charge includes the obligation to cover the necessary costs to bring the goods into conformity, including the costs of postage, labour and materials. The repair or replacement needs to be completed within a reasonable time and without any significant inconvenience to the consumer.

*4.23. Does the Regulation give the customer a right to have after-sale services in the Member State where he or she resides?*

No, the Regulation does not grant any such right. As explained above, the Regulation deals with other issues, notably those relating to access. The Regulation's prohibition of discrimination is therefore not to be understood as affecting the application of any territorial or other limitation on after-sales customer assistance or after-sales obligations offered by the trader to the customer. Consumer protection matters such as those relating to after-sales service are regulated by other acts of EU law which grant certain rights to consumers, such as the Consumer Rights Directive and the Consumer Sales and Guarantees Directive. As noted above, the application of the Regulation leaves these Directives unaffected.

**5. Non-discrimination for reasons related to payments (Article 5)**

*5.1. Does the non-discrimination rule for reasons related to payment cover payments made upon invoice?*

It primarily depends on the payment means accepted to settle the invoice. If the payment means fall within the scope of Article 5 of the Regulation, which provides for non-discrimination for reasons related to payment, there can be no discrimination of this kind.

*5.2. Will traders have to accept all national debit cards from other EU countries?*

No. The Regulation specifies that traders may not discriminate based for instance in light of the Member State in which a credit or debit card is issued, but only within a specific payment brand and category.

In practice, this means for instance that if a trader accepts debit cards of a particular brand, he or she does not need to accept credit cards of that same brand. It also means that the trader needs not to accept commercial credit cards of a given brand when he or she accepts consumer credit cards of that brand.

*5.3. Is the trader obliged to enter into agreements with payment initiation service providers covering all banks in Europe?*

A trader using payment initiation services, as defined in Directive (EU) 2015/2366, is under no obligation to accept the payment if this requires entering into a new or modified contract with a payment initiation service provider.

*5.4. Is the trader entitled to withhold goods or services provided to customers from another Member State pending the conclusion of the payment?*

Yes. The Regulation specifies that the prohibition of discrimination for reasons related to payment does not prevent the trader from doing so, but only where that is justified by objective reasons.

*5.5. Is the trader obliged to accept any type of payment means?*

No. The provision on non-discrimination for reasons related to payment is based on the progress made on payment services rules, and in particular the revised Payment Services Directive which facilitates the use of credit cards by capping interchange fees for card-based payments transactions. The Regulation prevents traders from applying different payment conditions based on the customer's residence, for instance. However, as long as there is no discrimination of this kind, traders remain free in principle to decide which means of payment they accept.

*5.6. Does the Regulation cover payments by cash?*

No, the provision on non-discrimination for reasons related to payment does not cover payments in cash.

*5.7. Does the Regulation harmonise fees for the use of credit cards?*

No, the Geo-blocking Regulation does not harmonise such fees. It provides for a non-discrimination rule, while specifying that in certain cases the trader may request charges for the use of card-based payment instruments for which interchange fees are not regulated. Any such charges may in any case not exceed the direct costs borne by the trader for the use of the payment instrument.

## **6. Agreements on passive sales (Article 6)**

*6.1. Will the trader be allowed to treat customers from other Member States differently, for instance by refusing access to their goods or services, if that is required by contractual arrangements with suppliers?*

When the differential treatment is not compatible with the prohibitions of discrimination set out in the Regulation, it mainly depends on what sort of restrictions those contractual arrangements impose on the trader and especially whether or not they relate to passive sales (i.e. they prevent purchases following unsolicited requests of customers).

Agreements which impose obligations on traders, in respect of such passive sales, to act in a manner which is not compatible with any of those prohibitions of the Regulation, are not allowed: they are automatically void under the Regulation. However, agreements restricting active sales remain unaffected by the Regulation.

The Regulation further clarifies that it does not affect the application of rules on competition, in particular Articles 101 and 102 TFEU.



## **7. Enforcement, assistance and application (Articles 7, 8 and 11)**

### *7.1. How will the rules of the Regulation be enforced?*

According to Article 7 of the Geo-blocking Regulation, Member States must designate one or more bodies responsible for its adequate and effective enforcement. Where it comes to relations between traders and consumers, such enforcement is facilitated by the inclusion of the Regulation in the Annex to the Consumer Protection Cooperation Regulation (2006/2004, as revised and replaced by 2017/2394). In addition, businesses and consumers will be able to enforce their rights stemming from the Geo-blocking Regulation on the basis of existing EU and national rules regarding such enforcement.

### *7.2. Following this Regulation, which courts are competent in case of disputes?*

The Regulation contains no rules on the competent courts and does not affect the rules in this regard set out in the Brussels I Regulation. The latter establishes that in matters related to a contract between a consumer and a person who pursues professional activities in the Member State of the consumer or who directs his activities to that Member State, a consumer may bring proceedings against the trader in the courts of the Member State where the consumer is domiciled and proceedings may be brought against the consumer only in those courts.

### *7.3. How should these rules be enforced vis-à-vis traders established in third countries?*

The Regulation does not contain any particular rules relating to the enforcement vis-à-vis third country traders either. Depending on the circumstances of the case, such as the existence of international agreements with the third countries concerned or the presence of assets or representatives of the trader in the Union, the competent enforcement authority in the Member State (or Member States) where the breach takes place may take measures to ensure compliance of traders established in third countries with the Regulation. Likewise, consumers or businesses affected by the non-compliance may themselves seek to enforce their rights under the Regulation also in respect of such third country traders before the competent courts (possibly those of the third country concerned).

### *7.4. Will customers be entitled to refer infringements to an enforcement body?*

Customers will be entitled to refer alleged infringements of the Regulation to the enforcement bodies designated by the Member States where the rules applicable to the functioning of those bodies so provide. The Regulation itself does not contain any rules on such referrals.

### *7.5. Could courts be appointed as enforcement bodies?*

The Regulation clarifies that the enforcement bodies could include courts or administrative authorities. What matters from the viewpoint of the Regulation is especially that the designation and the powers of the designated bodies are such that adequate and effective enforcement is ensured.

### *7.6. What sanctions or penalties does a trader risk if he or she does not comply with the Regulation?*

It is up to every Member State to ensure that effective, proportionate and dissuasive measures can be taken against traders who are in breach of the Regulation. Member States are required to communicate their measures to the Commission, which is then to make them publicly available on its website.

*7.7. Is there any assistance to be provided to consumers in case of disputes with traders?*

Yes. According to Article 8 of the Regulation, each Member State must designate a body or bodies responsible for providing assistance to consumers in the case of a dispute with a trader arising from the application of the Regulation. Such assistance could consist for instance of explaining the consumer's rights, helping consumers to settle a dispute with a trader based in another Member State or explaining consumers whom to contact or what to do if the consumer assistance body itself cannot help.

*7.8. When are the new rules coming into force and from which date will they apply?*

The Regulation will enter into force on the 20th day after its publication in the Official Journal of the EU. It will apply from 3 December 2018 (that is 9 months after the date of its publication).

However, Article 6 of the Regulation on agreements on passive sales applies from a later date, namely 23 March 2020 (that is, 24 months after the date of entry into force), with regard to provisions of agreements which are concluded before 2 March 2018 and which are compliant with the relevant rules of EU and national competition law.