

Did you get “geo-blocked” on Black Friday and Cyber Monday this year?

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According to a European Commission survey the majority of websites do not let consumers buy from another EU country[1].

Traders use various practices restricting online cross-border sales based on nationality, residence or place of establishment.

These discriminatory practices can occur both online and off-line and include: denying delivery to customers from other Member States, declining foreign payment cards, automatically re-routing foreign customers to the version of the website tailored to their home country.

A new EU Regulation aims to put an end to unjustified geo-blocking, creating new opportunities for customers and businesses across the EU. The Regulation (EU) 2018/302[2] (“the Regulation”) took effect on 22 March 2018 in all EU Member States and applies from 3 December 2018.

WHO DOES IT CONCERN?

The Regulation applies to traders offering goods and/or services to customers in the EU, irrespective of their country of establishment. Hence, U.S.-based companies engaging in cross-border transactions with EU customers have to comply with the Regulation.

The new legal framework benefits:

- consumers who are nationals of, or residents in, an EU Member State; and
- businesses that are established in a Member State and purchase goods or services within the EU for the sole purpose of end-use.

WHAT ARE THE KEY PROVISIONS OF THE REGULATION?

The Regulation imposes on traders the obligation to treat EU customers that are in the same situation on equal terms, without regard to their nationality, place of residence or place of establishment.

This obligation particularly applies to the following areas:

Access to websites

8, rue Sainte-Zithe PO Box 690 L-2016 Luxembourg - T (+352) 297 298 1 - F (+352) 297 299 www.molitorlegal.lu

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The blocking of access to websites and re-routing without the customer's prior consent are prohibited under Article 3 of the Regulation. Customers have the right to access the version of their choice of e-commerce websites.

Sale of goods and services

Under Article 4 of the Regulation:

- A customer who buys goods (e.g. clothes) which the trader does not deliver to the customer's Member State is entitled to delivery in the Member State where the trader offers delivery under the same conditions as domestic customers.
- A customer who wishes to purchase an electronically supplied service (e.g. web hosting) from a trader established in another EU country is entitled to do so in the same manner as local customers.
- A customer who buys a service (e.g. accommodation) that is provided in a certain physical location in another EU country where the trader operates is entitled to the same conditions as those offered to nationals/residents of the country of the trader.

Non-discrimination in payments

Traders are not allowed to apply different conditions for a payment transaction, within the range of means of payment accepted by them, for reasons such as nationality or place of residence.

WHAT IMPACT ON PRICING AND PROMOTIONS?

Under the Regulation, traders are free to charge different prices on their websites as long as they allow the customers to access the various versions of websites and benefit from the different prices.

The same holds true for promotions. Traders remain free to launch sales, promotions and other types of discounts on the websites of their choice provided that consumers from other Member States can access these special offers on a non-discriminatory basis.

WHAT TO EXPECT NEXT?

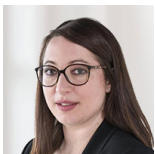
Under the Regulation, Member States are required to designate specific bodies responsible for the enforcement of the Regulation and adopt appropriate measures for non-compliant traders. In Luxembourg, a draft bill^[3] provides that the European Consumer Centre will be responsible for the enforcement of the Regulation. Under the bill, consumers and consumer associations may bring an action for an injunction against traders violating the Regulation. Traders could face up to 120 000 euros in cases of non-compliance with the injunction.

[1] https://ec.europa.eu/info/sites/info/files/geoblocking-factsheet_en.pdf

[2] Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC

[3] Draft bill No 7366

Your contact(s)

**Virginie LIEBERMANN****Counsel**

Avocat à la Cour, Member of Luxembourg Bar, 2008

virginie.liebermann@molitorlegal.lu

**Corina CIORNÎ****Associate**

Avocat, Member of the Luxembourg Bar, 2017