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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(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, between Member States, State barriers alone. 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 customers from other Member States wishing to engage in cross-border transactions (a practice known as ‘geo-blocking’). It also occurs when certain traders apply different general conditions of access to their goods and services with respect to such customers from other Member States, both online and offline. Although such different treatment might, in some cases, be objectively justified, in other cases, some traders' practices deny or limit access to goods or services by customers wishing to engage in cross-border transactions, or some traders apply in this regard different general conditions of access, which are not objectively justified.

(2) There are different underlying reasons why companies, and in particular microenterprises and small and medium-sized enterprises (SMEs), apply different

Changes to legislation: *Regulation (EU) 2018/302 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 16 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

general conditions of access. In many cases, divergent legal environments, the legal uncertainty involved, the associated risks as regards the applicable consumer protection laws, the environmental or labelling laws, taxation and fiscal issues, delivery costs or language requirements, contribute to traders' unwillingness to engage in commercial relations with customers from other Member States. In other cases, traders artificially segment the internal market along internal frontiers and hamper the free movement of goods and services, thereby 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 transactions within the Union, including in the sector of electronic commerce, which prevents the full growth potential of the internal market from being realised. Hence, this Regulation should clarify the situations in which there can be no justification for different treatment of this kind, thereby bringing clarity and legal certainty for all participants in cross-border transactions and ensuring that rules on non-discrimination can be effectively applied and enforced across the internal market. Removing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment could foster growth and increase consumer choice throughout the internal market.

(3) This Regulation aims to address unjustified geo-blocking by removing certain barriers 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 cause fragmentation of the internal market, often leading traders to engage in geo-blocking practices. The European Parliament, the Council and the Commission should therefore continue to address those barriers with a view to reducing market fragmentation and to completing the internal market.

(4) Pursuant to Article 20 of Directive 2006/123/EC of the European Parliament and of the Council[(3)], 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. This Regulation aims to further clarify Article 20 of Directive 2006/123/EC by defining certain situations where different treatment based on nationality, place of residence or place of establishment cannot be justified under that provision. However, insofar as this Regulation conflicts with the provisions of Directive 2006/123/EC, this Regulation should prevail. Moreover, unjustified 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.

(5) For the purposes of ensuring the good functioning of the internal market and fostering access to, and the free movement of, goods and services across the Union without discrimination based on nationality, place of residence or place of establishment, the targeted measures set out in this Regulation, which provide for a clear, uniform and

***Changes to legislation:** Regulation (EU) 2018/302 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 16 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

effective set of rules on a selected number of issues, are therefore required. Those measures should aim to widen customer choice and access to goods and services, whilst taking due account of traders' freedom to organise their commercial policy in accordance with Union and national law.

(6) This Regulation aims to prevent discrimination based on customers' nationality, place of residence or place of establishment, including unjustified geo-blocking, in cross-border transactions between a trader and a customer relating to the sales of goods and the provision of services within the Union. It seeks to address direct, as well as indirect discrimination. Thus, it also seeks to cover 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 or place of residence, regardless of whether the customer concerned is present, permanently or on a temporary basis, in another Member State, 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 of language made or the Member State where the customer's payment instrument has been issued.

(7) This Regulation should not apply to situations which are purely internal to a Member State where all the relevant elements of the transaction are confined to a single Member State, in particular 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 offer, as well as the use of an online interface.

(8) Some regulatory and administrative barriers for traders have been removed across the Union in certain service sectors as a result of the implementation of Directive 2006/123/EC. Consequently, in terms of its material scope, consistency should be ensured between this Regulation and Directive 2006/123/EC. Accordingly, this Regulation should apply, inter alia, to non-audiovisual 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 and the subsequent evaluation of that exclusion for which this Regulation provides. Audiovisual services, including services the principle purpose 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.

(9) 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 Regulations (EC) No 1008/2008[(4)], (EU) No 1177/2010[(5)] and (EU) No 181/2011[(6)] of the European Parliament and of the Council already contain broad prohibitions of discrimination covering all discriminatory practices that this Regulation seeks to address. Furthermore, it is intended that Regulation (EC) No 1371/2007 of the European Parliament and of the Council[(7)] will be amended to that effect in the

Changes to legislation: *Regulation (EU) 2018/302 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 16 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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.

(10) Where a trader offers a bundle that combines several services or a bundle of goods combined with services, and one or more of those services would, if offered on an individual basis, fall within the scope of this Regulation while another service or services would not, that trader should either comply with the prohibitions set in this Regulation as regards the whole bundle, or at least offer, on an individual basis, services that fall within the scope of this Regulation, if those services are offered to customers by the same trader on an individual basis. Where a trader provides a service or a good on an individual basis outside a bundle, the trader should remain free to decide the price to be applied to such a service or a good outside a bundle in so far as the trader does not apply different pricing for reasons related to nationality, place of residence or place of establishment.

(11) 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.

(12) Pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council[(8)], the choice of law applicable to contracts between a consumer and a professional who pursues commercial or professional activities in the country of the consumer's habitual residence, or who, 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 by provisions that cannot, by virtue of the law of the country of the consumer's habitual residence, be derogated from by agreement. Pursuant to Regulation (EU) No 1215/2012 of the European Parliament and of the Council[(9)], in matters related to a contract between a consumer and a person who pursues commercial or professional activities in the Member State of the consumer's domicile or who, 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 the consumer is domiciled and proceedings may be brought against the consumer only in those courts.

(13) This Regulation should be without prejudice to Union law concerning judicial cooperation in civil matters, and in particular the provisions on the law applicable to contractual obligations and on court jurisdiction set out in Regulations (EC) No 593/2008 and (EU) No 1215/2012. In particular, the mere fact that a trader complies with this Regulation should not be construed as implying that a trader directs activities to the consumer's Member State within the meaning of point (b) of Article 6(1) of Regulation (EC) No 593/2008, and of point (c) of Article 17(1) of Regulation (EU) No 1215/2012. Therefore, the mere fact that the trader does not block or limit access to an online interface by consumers from another Member State, does not apply different general conditions of access in the cases laid down in this Regulation or does not apply different conditions for payment transactions within the range of means of payment accepted, should not, on its own, be considered as ‘directing the trader's

***Changes to legislation:** Regulation (EU) 2018/302 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 16 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

activities to the consumer's Member State' for the purpose of the determination of the applicable law and jurisdiction. Nor should a trader, on those grounds alone, be considered to be directing activities to the Member State of the consumer's habitual residence or domicile, where the trader provides information and assistance to the consumer subsequent to the conclusion of the contract that has resulted from the trader's compliance with this Regulation.

(14) As regards the meaning and application of the concept of 'electronically supplied services' as defined in this Regulation, it is important to provide legal certainty and ensure consistency with Union law relating to the value-added tax (VAT), which allows the trader to declare and pay VAT in a simplified manner via a VAT Mini-One-Stop-Shop (MOSS) in accordance with the rules on special scheme for non-established taxable persons set out in Council Directive 2006/112/EC[(10)] and Council Implementing Regulation (EU) No 282/2011[(11)]. Due to rapid technological and commercial developments, the concept of electronically supplied services should be defined in a technology-neutral manner by referring to the main characteristics of such services in a way that is consistent with the definition provided for in Article 7(1) of Implementing Regulation (EU) No 282/2011. Accordingly, when interpreting and applying that definition, due account should be taken of the further specifications included in Annex II to Directive 2006/112/EC and in Article 7(2) and (3) of, and Annex I to, Implementing Regulation (EU) No 282/2011, in as far as the services listed in those provisions fall within the scope of this Regulation.

(15) The discriminatory practices that this Regulation seeks to address typically take place by means of 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, 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 general conditions of access 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 to be general conditions of access for the purposes of this Regulation.

(16) When purchasing goods or services as end-users under general conditions of access, consumers and undertakings, in particular microenterprises and SMEs, are often in a similar position. Hence, both consumers and undertakings should be protected against 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 subsequent resale, transformation, processing, renting or subcontracting because that would affect widely used distribution schemes between undertakings in a business to business context, which are often negotiated bilaterally and directly linked to the commercial strategies, both downstream and upstream. Examples of such schemes include selective and exclusive distribution, which generally allow for manufacturers