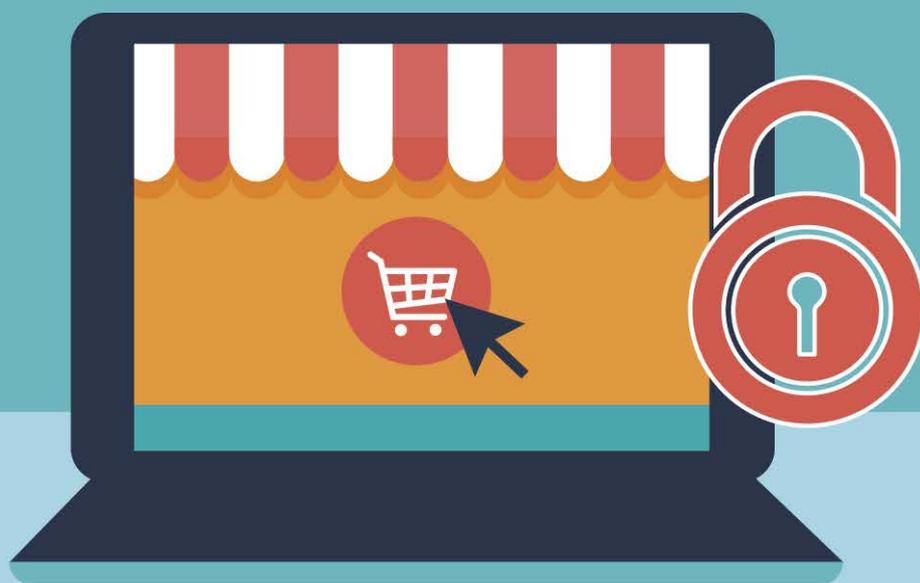




Questions & Answers on the Geo-blocking Regulation in the context of e-commerce



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1.	<i>Introduction</i>	4
1.1.	<i>Context</i>	4
1.2.	<i>Geo-blocking Regulation – General overview</i>	7
2.	<i>Rights and obligations for traders and consumers in practice</i>	9
2.1.	<i>Scope of the Regulation (Article 1)</i>	10
2.2.	<i>Access to online interfaces (Article 3)</i>	17
2.3.	<i>Non-discrimination in access to goods or services (Article 4)</i>	20
2.4.	<i>Non-discrimination for reasons related to payments (Article 5)</i>	27
2.5.	<i>Agreements on passive sales (Article 6)</i>	30
3.	<i>Enforcement of the Geo-blocking Regulation by Member States</i>	31
4.	<i>Beyond the Geo-blocking Regulation – e-commerce framework</i>	35
4.1.	<i>Cross-border delivery</i>	36
4.2.	<i>Directing of activities and determining applicable law and jurisdiction</i>	39
4.3.	<i>Mini-One-Stop-Shop for providers of electronically supplied services</i>	41
4.4.	<i>Safe, cheap and convenient payments online</i>	43
5.	<i>Annex: Implementation timeline of adopted measures related to e-commerce</i>	44

1. Introduction

This document aims to provide practical guidance on the main provisions of the Geo-blocking Regulation in view of its entry into force and the more general developments of certain aspects of the EU e-commerce framework. The document contains information which might be useful to (i) traders who seek to adapt their commercial practices in accordance with the Geo-blocking Regulation, (ii) to consumers and customers¹ who need to be informed about the provisions of the Regulation and their impact on everyday purchases, and (iii) to the authorities in the Member States who will be responsible for the enforcement of the Regulation.

In particular, this document contains questions and answers on the substantive provisions of the Regulation (Section 2), as well as on the enforcement tools provided for in it (Section 3). In this regard, this document updates and expands upon answers already provided in the Q&A document published on 23 March 2018, which is replaced by the current document. It also provides additional information on certain aspects relevant to e-commerce but not directly covered or modified by the Regulation, which are closely connected to its application (Section 4).

1.1. Context

Consumers and businesses – especially small and medium-sized enterprises (SMEs) – are increasingly interested in shopping across the EU. 68 % of internet users in the EU shopped online in 2017². However, traders often still refuse to sell or supply to customers from another Member State without any objective reason or to offer equally advantageous prices compared with local customers. A Commission survey found that only 37% of websites allow customers from another Member State to reach the final step up to the point just before pushing the order confirmation button³. The Commission regularly receives complaints involving cases of different treatment due to the customer's nationality, place of residence or place of establishment. The problem affects consumers as well as businesses, when they purchase goods and services for their own use. It exists both in the online environment and in the physical world⁴.

¹ For the purposes of the Geo-blocking Regulation, consumer is any natural person who is acting for purposes which are outside his or her trade, business, craft or profession; customer is a consumer who is a national of, or has his or her place of residence in, a Member State, or an undertaking which has its place of establishment in a Member State, and receives a service or purchases a good, or seeks to do so, within the Union, for the sole purpose of end use.

² The Digital Economy and Society Index 2018, see <http://ec.europa.eu/digital-single-market/en/desi>

³ https://ec.europa.eu/info/publications/geo-blocking-consumers-online-findings-mystery-shopping-carried-out-european-commission_en

⁴ For more data underpinning the analysis for the Geo-blocking Regulation, see JRC Technical report on The European Digital Single Market, Its Role in Economic Activity in the EU (<https://ec.europa.eu/jrc/sites/jrcsh/files/JRC98723.pdf>), JRC-IPTS based on Mystery Shopping Survey 2015 (GfK Mystery Shopping (https://ec.europa.eu/info/publications/geo-blocking-consumers-online-findings-mystery-shopping-carried-out-european-commission_en), the European Commission's 2015 public consultation on 'Geo-Blocking and other geographically based restrictions when shopping and accessing information in the EU' (<https://ec.europa.eu/digital-single-market/en/news/public-consultation-geo-blocking-and-other-geographically-based-restrictions-when-shopping-and>), and the impact assessment accompanying the proposal for a Regulation on addressing geo-blocking and other forms of discrimination based on place of residence or

The Regulation (EU) 2018/302 ('Geo-blocking Regulation' or 'the Regulation')⁵ aims to provide consumers and businesses within the EU's internal market with more opportunities. In particular, it addresses the problem of some customers not being able to buy goods and services from traders located in a different Member State because of their nationality, place of residence or place of establishment.

Geo-blocking refers to practices used by online sellers to restrict online cross-border sales based on nationality, residence or place of establishment. Such geo-blocking practices include: denying access to websites from other Member States and/or situations where access to a website is granted, but the customer from abroad is prevented from finalising the purchase or is 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 consumers are physically present at the trader's location but are either prevented from accessing a product or service or from being offered different conditions due to their nationality or residence. The Regulation lays down directly applicable provisions which aim at preventing these practices in specific situations where there is no objective justification for different treatment based on nationality, residence or place of establishment.

The Regulation has to be seen in the context of the overall e-commerce package of measures that had been put forward by the Commission and reinforces its impact. Indeed on 25 May 2016, the Commission presented a comprehensive package of measures to boost the potential for cross-border e-commerce in Europe, as a prerequisite for the full functioning of the Digital Single Market. The main aim of the package was to break down barriers to cross-border online activity and to define a comprehensive e-commerce framework focusing on three main objectives: (i) Ensuring better access to goods and services offered online; (ii) Building trust for consumers and greater certainty for businesses; and (iii) Reducing transaction costs and administrative burden for businesses when trading online across borders. The package was an inter-linked set of measures, which reinforced each other to constitute a real step change in the ability of Europeans to use e-commerce effectively. An important number of those initiatives have already been adopted by co-legislators, including:

- New rules to reduce of the VAT-related administrative burden of cross-border transactions⁶ were adopted in December 2017. From 1 January 2021, these rules will simplify VAT collection when consumers buy goods and services online from another Member State or a non-EU country by introducing the possibility for the suppliers to use the VAT One Stop Shop.
- The Consumer Protection Cooperation (CPC) Regulation⁷ has been revised and will be replaced by the new CPC Regulation (EU) 2017/2394⁸ from 17 January 2020. The

establishment or nationality within the single market
(http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=15953)

⁵ 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.

⁶ https://ec.europa.eu/taxation_customs/business/vat/digital-single-market-modernising-vat-cross-border-e-commerce_en

⁷ 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)Text with EEA relevance, OJ L 364, 9.12.2004, p. 1–11

CPC network allows national authorities in EU and EEA countries to cooperate to jointly address breaches of consumer law in the Single Market when an issue involves traders and consumers in different countries. Accordingly, when it comes to relations between traders and consumers, the enforcement of the Geo-Blocking Regulation is facilitated by the Consumer Protection Cooperation Regulation, which covers infringements that have occurred, are occurring or likely to occur and by that harm the collective interests of consumers.

- A new Regulation⁹ was adopted on cross-border parcel delivery services that aims to make prices for these services more transparent and affordable and to increase regulatory oversight of the EU parcel market. The Regulation will boost e-commerce by making easier for consumers and companies, in particular SMEs, to buy and sell products and services online with confidence across the EU.
- As part of the ongoing modernisation of the EU copyright framework, new rules have been adopted¹⁰ 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.

In addition, the Commission has adopted several legislative proposals that are currently discussed in the course of the legislative procedure by the co-legislators, including:

- Under the digital contract rules¹¹ the Commission has adopted legislative proposals to harmonise the main mandatory consumer rights applicable to the supply of digital content and sales of goods. Once adopted, these legal acts should reduce the costs resulting from differences in contract law, create more legal certainty for businesses and help consumers make the most of shopping across the EU.
- On 11 April 2018 the Commission adopted two proposals for directives¹² in the area of consumer protection (New Deal for Consumers) that aim to improve compliance with EU consumer protection legislation, in particular by introducing collective redress mechanisms. The proposals also modernise EU consumer legislation in light of market developments on, e.g. the conclusion of contracts on online marketplaces. Finally, these proposals reduce the burden on businesses in specific areas, such as the right of withdrawal applicable to used goods.

⁸ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (Text with EEA relevance) OJ L 345, 27.12.2017, p. 1–26

⁹ Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services

¹⁰ Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market,

¹¹ https://ec.europa.eu/info/business-economy-euro/doing-business-eu/contract-rules/digital-contracts/digital-contract-rules_en

¹² Proposal for a Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC (COM(2018)184 final) and Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules (COM(2018)185 final). For more information: https://ec.europa.eu/info/law/law-topic/consumers/review-eu-consumer-law-new-deal-consumers_en.

- A Regulation to promote fairness and transparency for business users of online intermediation services has also been proposed¹³ - it aims to ensure a fair, trusted and predictable environment for the digital online economy. Once adopted, the new rules will help ensure a fair and innovation-driven ecosystem for the online platform economy; they will balance the growth of online platforms and search engines with the need to protect SME business users in the EU by focussing on transparency and new options for redress. An observatory provided for in this Regulation and supported by a group of independent experts, will closely monitor the online platform economy and advise the Commission on the need for future initiatives.
- Facilitating access to audiovisual services across borders has been one of the priorities identified under the Commission's Digital Single Market Strategy for Europe¹⁴. In 2016 the Commission presented a proposal for updated EU rules for audiovisual media¹⁵ on which the political agreement had been found¹⁶. Other legislative proposals¹⁷ related to the modernisation of EU copyright rules are currently being in the legislative process, which aim at providing more online content across borders.

The interaction of some of these measures with the Geo-blocking Regulation, as well as a table summarising the implementation timeline, are also described in more detail in section 4 and Annex of this document.

1.2. Geo-blocking Regulation – General overview

The Regulation provides for an obligation to treat EU customers (including consumers and other end-users) in the same manner when they are in the same situation, regardless of their nationality, place of residence or place of establishment.

What are the main components of the Geo-blocking Regulation?

- **Sale of goods and services**

Article 4 of the Regulation defines certain 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 and possibility to acquire goods and services as local customers. These situations are as follows:

- Sale of goods without delivery outside the area served by the trader.

¹³ Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services (COM(2018) 238 final)

¹⁴ COM(2015)192 final

¹⁵ Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, COM(2016) 287 final.

¹⁶ http://europa.eu/rapid/press-release_IP-18-3567_en.htm

¹⁷ Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market - COM(2016)593, Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, COM(2016) 594 final

- A customer buys goods, for example electronic devices, clothes, sportswear or books, which the trader does not deliver to the customer's Member State. Such customers are entitled to delivery in the Member State where the trader offers delivery in the same way as local customers.

Example: A Belgian customer wants to buy a camera and finds the best deal on a German website, which however only offers delivery/pick-up points in Germany or collection at the trader's premises. The customer is entitled to order the goods and collect them at the trader's premises or have them delivered to another address/pick-up points in Germany, just like any German consumer.

- Sale of electronically supplied services

- A customer wants to access and buy an electronically supplied service, for example 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.

Example: A Bulgarian customer wishes to buy hosting services for her website from a Spanish company. She will have access and can buy this service at the same conditions as Spanish consumers, i.e. without having to pay a different net price (i.e. excluding VAT) compared to a Spanish consumer.

- Sale of services provided in a specific physical location

- a customer buys a service that is supplied on the trader's premises or in a physical location where the trader operates, where the premises or the location are in another Member State than in that of the customer. This category covers services such as for example concert tickets, accommodation or car hire. In this situation, the customer is also entitled to be treated in the same way as nationals/residents of the country of the trader.

Example: An Italian family visits a French theme park and wants to take advantage of family discounted tickets. The Italian family will be able to buy the tickets in the same way as 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 (in compliance with EU law) obliges the trader to block access to the goods or services offered.

For online services related to non-audiovisual works protected by copyright (such as e-books, video games, music and software), 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 2 years after entry into force of the Regulation. However, other rules in the Regulation, such as those prohibiting the discriminatory blocking of access to online interfaces and re-routing without the customer's

prior consent as well as discrimination for reasons related to payment, already apply to these services.

- **Access to websites**

Article 3 of the Regulation bans the blocking of access to websites and 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-audio-visual services supplied electronically, such as e-books, music, games and software.

Example: An Irish customer wants to access the Italian version of an online clothing store's website. Even though she types in the URL of the Italian site, she still gets redirected to the Irish site. After 3 December 2018, being redirected will require the customer's explicit consent. Moreover, 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 are free to accept whatever payment means they want, the Regulation includes a specific provision (Article 5) on non-discrimination within the range of the 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 the following three conditions are met:

- payments are made by means of electronic transactions by credit transfer, direct debit or a 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.

Example: A German trader accepts a certain brand of credit card and direct bank transfers for purchases on its website. However, the trader has refused payments made with a credit card from the same brand issued in Austria and credit transfers from Austrian banks. The Geo-blocking Regulation will now prohibit this practice.

This provision should be understood against the background of the 2012 single euro payments area (SEPA) Regulation¹⁸, which stipulates that when shopping abroad consumers can use their debit card to make payments in euro as they would in their home country.

2. Rights and obligations for traders and consumers in practice

This section aims to help traders and customers to better understand the rights and obligations stemming from the Geo-blocking Regulation.

¹⁸ https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/payment-services/single-euro-payments-area-sepa_en

2.1. Scope of the Regulation (Article 1)

2.1.1. *What is the relation between the Geo-blocking Regulation and the Services Directive?*

The prohibition of discrimination on grounds of nationality, which covers also indirect discrimination, is a general principle of Union law laid down in Article 18 Treaty on the Functioning of the European Union (TFEU) and Article 21(2) of the EU Charter of fundamental rights, as well as in the specific provisions of the abovementioned Treaty related to internal market freedoms.

As far as the provision of services is concerned, that general principle is in particular specified by Article 20(2) of the Services Directive¹⁹, according to which Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria. Application of the non-discrimination principle as specified in this Article depends on a case-by-case assessment of the trader's practices. Objective justification may relate, for instance, to the lack of the required intellectual property rights in a particular territory, additional costs incurred because of the distance involved or the technical characteristics of the provision of the service, or different market conditions, such as higher or lower demand influenced by seasonality, different holidays periods in the Member States and pricing by different competitors²⁰. That Article remains applicable to situations not covered by the Geo-blocking Regulation.

On the other hand, in the situations covered by the Geo-blocking Regulation, the specific provisions contained therein will prevail over Article 20(2) of the Services Directive. Companies and consumers alike will benefit from more legal certainty about those specific practices which cannot be justified in any event. The Regulation prevents traders from discriminating in the specific situations covered, without the need to carry on a case-by-case assessment of the trader's practice, and thus provides legal certainty and improves enforceability.

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

The Regulation describes certain situations where differential treatment is 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).

Example: Tickets for a theme park can be bought in advance online or on the day at the entrance. In both cases, the Geo-blocking Regulation prohibits the application of different general conditions depending on the customer's nationality or residence. It also prohibits

¹⁹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

²⁰ An explicative list of potential justifications for different treatment is included in Recital 95 of Directive 2006/123/EC. Additional indications on the application of Article 20(2) are included in the Commission Staff Working Document "With a view to establishing guidance on the application of Article 20(2) of Directive 2006/123/EC on services in the internal market ('the Services Directive')", SWD(2012)146, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=SWD:2012:0146:FIN>.

practices that de facto prevent customers from some Member States to have access to online or off-line sales. This is without prejudice to any possible different conditions applied by the trader to offline as opposed to online sales in general, as long as these are applied irrespective of the customer's nationality, residence or place of establishment (such as, for instance, reduced prices in case of on-line advance booking).

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

The Regulation does not apply to a situation which is confined in all respects within a single Member State, such as where all the elements relevant to the transaction at stake are confined to one single Member State (so-called 'purely internal situations'). This means that the Regulation applies when the transaction has a cross-border element. The following elements could be considered: (i) the nationality, the place of residence or the place of establishment of the customer or of the trader; (ii) the place of execution (iii) the means of payment used in the transaction or (iv) 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.

Example: In the absence of any cross-border element, the Geo-blocking Regulation would not apply to a transaction between a trader established in Estonia and a consumer who is a national and resident in Estonia, wishing to access the Estonian version of the trader's website, buy a service and pay for it with his or her Estonian bank card.

2.1.4. Which sectors are not covered by the Regulation?

Under 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. The excluded services are, among others, the following:

- **Services in the field of transport.** These services are excluded from the Regulation especially considering that existing EU transport legislation²¹ recalled in recital 9 of the Regulation 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 a similar form of prohibition in its recast proposal for a Regulation on rail passengers' rights and obligations²². However, travel packages and linked travel arrangements, as defined in Directive 2015/2302²³, are covered by the Regulation.

²¹ 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 (Article 23), 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 (Article 4), Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (Article 4).

²² Proposal for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations (recast), COM(2017) 548 final (Article 5)

²³ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, OJ L 326, 11.12.2015, p. 1–33

- **Financial services/Retail financial services.** Financial services are excluded from the Regulation. This follows from the fact that the Regulation excludes from its scope activities that are also excluded from the scope of the Services Directive (Directive 2006/123/EC), which lists financial services, including payment services, as being out of scope. Recital 8 of the Regulation in this regard further clarifies that access to retail financial services are excluded, without prejudice to Article 5 of the Regulation regarding non-discrimination for reasons related to payments. Indeed, this provision does not regulate the access to (financial) services as such but rather prohibits discrimination in relation to the range of payment means accepted by traders.

- **Audiovisual services.** Audiovisual services are excluded from the scope of the Regulation. Recital 8 of the Regulation specifies that 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 the Regulation.

The first short-term review of the Geo-blocking Regulation and its scope

Article 9 of the Regulation provides for a review clause that stipulates that the Commission should regularly report to European Parliament, Council and the European Economic and Social Committee on its evaluation of the Regulation. The Regulation envisages a first review already by 23 March 2020. This first review should be carried out, in particular, to assess the scope of the Regulation (including sectors not covered by the Services Directive, such as audiovisual and transport) and the extent of the non-discrimination obligation laid down in Article 4: the aim is to assess whether it should also apply to electronically supplied services whose main feature is the provision of access to and use of copyright protected works (such as streaming or downloading of music, e-books, downloading or on-line videogames)²⁴.

2.1.5. Are gambling services within the scope of the Regulation?

The Geo-blocking Regulation does not apply to gambling, pursuant to its Article 1(3). Indeed, gambling services do not fall within the scope of the Services Directive either (Article 2(2)). Member States can regulate these services as long as they are in line with the rules on the internal market as established by the Treaty and as interpreted by the Court of Justice of the EU.

2.1.6. Does the Regulation also apply to flight tickets?

No, this Regulation does not apply to services in the field of transport. However, as mentioned above, existing EU transport legislation already prohibits discrimination in many cases. For example, Regulation (EC) No 1008/2008 prohibits discrimination based on the nationality or place of residence of the customer in the area of air services²⁵. In addition, general principles of the TFEU also prohibit discrimination based on nationality, including indirect forms based on the place of residence or place of establishment.

²⁴ See in this regard also the clarification provided for in the Commission declaration published with the Geo-blocking Regulation.

²⁵ Article 23 of Regulation 1008/2008 states that “access to air fares and air rates for air services from an airport located in the territory of a Member State to which the Treaty applies, available to the general public shall be granted without any discrimination based on the nationality or the place of residence of the customer or on the place of establishment of the air carrier's agent or other ticket seller within the Community.”

2.1.7. What is 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 non-EU country. Therefore, traders established in non-EU countries that operate in the EU are therefore subject to this Regulation.

2.1.8. Does the Regulation benefit all customers in Europe? What about non-EU 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 that 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 EU Member States. As a result, non-EU nationals who have their residence in the EU will also benefit from the Regulation within the EU.

2.1.9. Will this Regulation apply to the United Kingdom post Brexit?

For the information related to the Geo-blocking Regulation and Brexit, please consult the 'Notice to stakeholders on withdrawal of the United Kingdom and EU legislation in the field of Geo-blocking' of 21 March 2018²⁶.

2.1.10. Does this Regulation apply to Switzerland?

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

2.1.11. Does this Regulation apply to individuals who occasionally sell 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. A person who occasionally sells second-hand goods online, outside his or her profession or trade, does not fall within the scope of this Regulation. However, a trader who sells second-hand goods online as part of his or her economic activity, would be subject to it.

²⁶ Available at https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_brexit_Geo-blocking_final.pdf

2.1.12. 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 (i.e. they are not individually negotiated) and the transaction is for the sole purpose of end use (i.e. made without the intention to re-sell, transform, process, rent or subcontract).

Example: A Finnish law firm is looking for a new provider for back-up and cloud storage services and has found an attractive offer from an Estonian provider. This transaction would be covered by the Geo-blocking Regulation.

2.1.13. 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 are purchased for reasons other than for the sole purpose of end use meaning when they are meant to then be resold, transformed, processed, rented or subcontracted). The Regulation does not mandate specific ways by which to identify in advance whether a 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, in order to prevent undertakings from purchasing quantities exceeding their internal needs. The Regulation therefore allows traders to apply adequate methods to ensure that the goods or service are bought for the purpose of end use.

Example: A hypermarket has a promotion for large screen TVs. To limit the promotion to end-users, there is a limit of 3 television sets per buyer. Such limitations could be consistent with the Geo-blocking Regulation.

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

Online marketplaces, where for example goods or services are sold by third parties, are subject to the provisions of the Geo-blocking Regulation when they act as traders within the meaning of the Regulation.

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

Example: An online marketplace sells its own goods and also hosts other traders who sell through the same website. For the purpose of this Regulation, the marketplace acts as a trader first of all with regard to customers of its own goods. It may also be considered a trader with regard to other traders selling through its website and thus acquiring the marketplace's services (such as hosting services) On the other hand the trader selling to the end-user through an online market place is a trader subject to the Regulation on its own.

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

No. The prohibition of discrimination on the grounds of nationality, which also covers also indirect discrimination, is a general principle of EU law laid down in Article 18 of the Treaty on the Functioning of the European Union and Article 21(2) of the Charter of fundamental rights of the European Union, as well as in the specific provisions of the abovementioned Treaty related to internal market freedoms. In addition, in situations not covered by this Regulation, national rules transposing Article 20(2) of the Services Directive may be applicable. Under this provision, Member States should ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient; this should not exclude the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria. In some cases sector-specific legislation (for instance in the field of transport²⁷, or health²⁸) may also apply.

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

The concept of electronically supplied services defined in Article 2(1) of the Regulation²⁹ derives from and should be consistent with the definition laid down in Implementing Regulation (EU) No 282/2011³⁰. Due account should be taken of the further specifications included in this instrument, as well as in VAT Directive 2006/112/EC, as clarified by Recital 14 of the Geo-blocking Regulation. Moreover, please note that, as set out above, electronically supplied audiovisual services are not included in the scope of the Regulation (see also Question. 2.1.4.)

In practice, electronically supplied services that fall under the obligations of the Regulation include for instance cloud services, data warehousing services, web hosting and the provision of firewalls, use of search engines, and internet directories, website supply, distance maintenance of programmes and equipment, remote systems administration.

Other non-audiovisual electronically supplied services, whose main feature is the access of and use of copyright protected works (including access to and/or downloading of e-books, software, including updates, streaming of music and online videogames) are covered by all provisions of the Regulation, apart from the non-discrimination obligation laid down in Article 4 (i.e. the prohibition of different conditions on the basis of nationality, place of residence and place of establishment, see also Question 2.1.18).

²⁷ See for instance Regulation (EC) No 1008/2008, (EU) No 1177/2010 and (EU) No 181/2011 as regards air, maritime and bus transport of passengers.

²⁸ See for instance Article 4 of 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.

²⁹ "Services which are delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology".

³⁰ Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

2.1.17. 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 that 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. However in such cases the whole bundle will be subject to the rules of the Regulation, if one particular aspect of it is covered. If trader unbundle goods or services and they fall within the scope of the Regulation, they are free to set the price and conditions for such goods or services, provided they do not apply discriminatory conditions based on nationality, residence or establishment.

Example: A trader provides a bundle comprising access/download of audiovisual services and a web-hosting service at a promotional price. It can therefore comply with the Regulation either by selling the entire bundle to foreign customers at the promotional price or by providing them with only the web-hosting service, for instance if this service is offered on an individual basis by the same trader. In the latter case, however, the trader cannot apply a different price³¹ to the individual service compared to that applicable to domestic sales.

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

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

These services, moreover, remain subject to all other than Article 4 provisions of the Geo-blocking Regulation, including the prohibition to block or limit access to online interfaces on the basis of the customer's nationality, residence or establishment of the customer. This means that a trader providing these services cannot prevent its clients from accessing different versions of its website, marketplace or app store, or cannot reroute them without their explicit consent, on the basis of criteria based on the customer's nationality, residence or establishment (including indirect criteria such as the IP address or the customer's payment details).

Moreover, where these services are provided cross-border, irrespective of their exclusion from Article 4 of the Regulation, the trader is prevented from discriminating against the electronic payment means on the basis of "nationality", i.e. because a credit or debit card of an accepted category or brand is 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 the abovementioned limitations on the application of Article 4 to these kinds of services.

³¹ The price in this example does not include the applicable VAT.

Example: A company in Romania that distributes software protected by copyright in several Member States, can still be able to refuse to sell these services in certain other Member States, in view of limitations on the required copyright held. However, in the Member States where the company offers its software services, it will not be able to discriminate based on payment means.

2.1.19. Does the Regulation cover online sale of physical books, DVDs and CDs?

Yes, the sale of these goods is covered by the provisions of the Regulation, including the prohibition of different general conditions on the basis of a customer's 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.

2.1.20. Does this Regulation cover the provision of public utilities, such as gas, electricity or water?

The Regulation contains no particular exclusion on the provision of public utilities. Such provision is therefore covered, provided that the requirements of the Regulation are met, for example the person providing them is considered a 'trader' and, where it comes to the non-discrimination provision of Article 4, the provision takes place in one of the situations described there (see also Question. 2.3.12).

2.2. Access to online interfaces (Article 3)

2.2.1. Do customers have the right to have access to existing different language versions or to all offers of goods or services shown on a given website?

Yes, the customer has the right in principle to access all versions and items published on the website, unless this is prevented by specific legislation applicable to the trader (see also Question 2.2.4.). On the other hand, the Regulation does not contain an obligation for traders to specifically set-up websites or sections of it in certain languages.

2.2.2. Does the trader's online interface need to be changed to ensure compliance?

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

Example: A trader's online interface requires the customer to provide a residence address and predefines only national geographic coordinates, without any possibility or clear indications on how to fill or transmit at least free text/coordinates in the event of foreign residence (without prejudice to limitations on available coordinates concerning the delivery address). This type of online interface would make virtually impossible to place the order for a customer with a foreign residence and would need to be adapted.

2.2.3. 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 does not necessarily need to be given every time the customer visits the same website. However, the customer does remain free to withdraw his or her consent at any point in time, and the version of the website that the customer initially sought to access must remain easily accessible.

Example: The website that the customer chose to be re-directed to should have an easily accessible button to take the customer back to other versions of the same website.

2.2.4. What are the legal requirements that could justify restrictions on access to online interfaces? What are the explanations that a trader needs to provide when applying these restrictions?

The obligation to grant access to their online interface provided for in the Regulation does not mean that traders no longer need to 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.

Example: A French website is subject to an order issued by the French courts that prevents access to parts of or all of its website in light of litigation on the use of registered trademarks in that country.

2.2.5. 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 of them, targeting customers from different Member States. The different version of the website might have a different layout, another language or other characteristics that make it, or part of it, specific to customers with a specific nationality, place of residence or place of establishment. This remains possible. However, redirecting customers from one version of the online interface to another version on a discriminatory basis and without their explicit consent is prohibited. Moreover, such a website or parts of it need to be accessible for customers from different Member States.

2.2.6. 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 its website that is different from the online interface that the customer initially wanted to access, for reasons related to the customer's nationality, place of residence or place of establishment.

Where the customer is redirected to another website, for instance a country-specific one because of those reasons, the Regulation will therefore apply; redirection can only occur

either with explicit consent of the customer or because of a specific legal obligation upon the trader to do so.

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

The Regulation does not specify how the trader should store the explicit consent of a customer for such rerouting, 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 processing personal data, EU data protection law applies, notably the General Data Protection Regulation³², and the e-Privacy Directive³³ when remembering such consent involves storing information, or gaining of access to information already stored in the terminal equipment.

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

The Regulation does not affect the provisions of the Rome I³⁴ and Brussels I³⁵ Regulations, including on traders directing their activities to a particular Member State. In this regard, the Geo-blocking Regulation stipulates that mere compliance with its rules does not mean that the trader directs his or her activities to consumers in another Member State.

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 therefore have to be decided on the basis of the Rome I and Brussels I Regulations and the relevant case-law relating to those Regulations. Section 4 contains further indications on this.

2.2.9. To what extent are purely informative websites subject to the restriction on re-routing?

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

It will therefore need 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 Article 3 on access to websites therefore applies, including its rules on re-routing.

³² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

³³ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

³⁴ 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).

³⁵ 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 (Brussels I).

2.2.10. Can traders block access to their apps or redirect customers to different national apps based on the country where their credit card is issued?

The Regulation prohibits the blocking of access to online interfaces or rerouting based on where the means of payment was issued; this entails that traders cannot block access to different versions of their online interfaces, including their apps, for reasons related to the customer's nationality and/or residence, through indirect means such as the Member State where the payment instrument is issued.

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

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

No. The Regulation does not impose an obligation on traders to sell, although it does prohibit them from discriminating on the basis of the customer's nationality, residence or establishment when 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 their nationality, residence or establishment.

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

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

Example: A trader who only delivers in Portugal or provides collection at pick-up points in Portugal cannot be obliged to set up pick-up points in Spain to serve Spanish customers. However the latter however will be able to collect their goods by themselves or by designated persons/providers at the pick-up points in Portugal.

2.3.3. Are traders allowed to charge customers extra payments if they offer to organise delivery of the sold goods?

Offering delivery options for purchased goods or services constitutes a service. Traders are in principle free to offer the services they wish to their customers. However, if traders decide to offer delivery services in specific Member States or in specific locations in Member States by stating this in their general conditions of access, they cannot discriminate against customers who wish to benefit from those delivery services based on their nationality, place of residence or place of establishment (see also Section 4.1 on cross-border delivery).

2.3.4. Does the Regulation oblige traders to move physically in order to provide services at the customer's location in Europe?

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

2.3.5. *Does the Regulation regulate prices?*

No. The purpose of the Geo-blocking Regulation is to tackle discrimination of EU customers. This currently hampers the potential for cross-border trade and prevents the full use of the single market. The Regulation does not regulate or harmonise price levels as such.

Traders therefore 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, including net prices (i.e. without affecting different VAT rates applicable).

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

Example: A website modifying the price in real time on the basis of demand and/or other parameters (such as past searches and/or purchases) unrelated to residence or nationality would in principle not be covered by the non-discrimination prohibition of the Geo-blocking Regulation.

2.3.6. *In the case of cross-border deliveries, is the trader allowed to charge a higher price (e.g. because of transport costs, shipping and handling)? If so, should the additional charges reflect the actual cost base?*

The Regulation does not regulate or harmonise price levels. The option of offering customers cross-border delivery in some or all Member States remains a free marketing choice of the trader in principle, which shall however be spelled out in the applicable general terms and conditions. The total price must be communicated in a clear and comprehensible manner to consumers before the conclusion of the contract (see in particular Articles 5, 6 and 8 of Consumer Rights Directive³⁶). See also Section 4 for further information on cross-border delivery and how Regulation 2018/644³⁷ provides for more transparency in the prices charged for cross-border parcel delivery services.

2.3.7. *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 Regulation does not affect the right of traders freely design their prices and websites across the EU and carry their marketing activities. 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 on a given website or point of sale), regardless of their nationality, place of residence or place of establishment.

³⁶ 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 .

³⁷ Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services.

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

2.3.8. *Is it possible for a customer to buy a product on one website but choose the delivery options from another version of this website?*

The conditions under which traders provide their services, including delivery options, are described in their general conditions of access. These in particular must be available on their websites and in any case shall be communicated in a clear and understandable manner to the consumer. When a customer decides to order a product or a service using a specific website, he or she typically agrees with these conditions. If an order is placed through a certain version of the website, the general conditions of access applicable to offers provided on that website will apply to the transaction.

Example: A Greek customer buys a product on the Bulgarian website of a trader, which only provides the possibility of delivery in Bulgaria. The trader also delivers to Greece, but only for orders placed through the Greek website. The Greek customer is not entitled to demand delivery in Greece for orders placed on the Bulgarian website. If on the contrary, the terms and conditions of service available on each website are the same, i.e. they include delivery to both countries, the fact that the order is placed on the Greek or Bulgarian national website cannot limit by itself the scope of the delivery service offered by the trader in the applicable terms and conditions.

2.3.9. *To what extent do traders fall within the scope of the Regulation when they sell with a delivery option only in their home Member State?*

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 against a foreign customer wanting to buy a good under the same conditions as a local (the so-called "shop-like-a-local" scenario).

Example: A Belgian customer wants to buy a refrigerator on the German website of a trader that only delivers to addresses in Germany. If the Belgian customer wants to pick up the goods at the trader's premises or at any other German delivery address served by the trader, the trader cannot discriminate against such a customer because of Belgian nationality or because the customer resides or is established in Belgium. However, the Belgian customer cannot oblige the German trader to deliver the good to Belgium if this is not provided for in the trader's general conditions of access.

2.3.10. *Does the Regulation require traders to sign up to the business register or to electronic waste schemes in each Member State where customers wish to buy goods or services under the rules of the Regulation? For instance, in the abovementioned example, is the German trader considered to be selling in Belgium and does the trader therefore have to be registered in Belgium?*

No, under the Regulation traders do not need to be registered in all Member States where consumers might show an interest in buying their goods, or actually buy them. The Regulation makes it clear that if traders just comply with the obligations of the Regulation, and therefore only ensure access to their website and the possibility to complete the purchase

on a non-discriminatory basis, this fact, in itself, does not imply that the trader is directing his or her activities to another Member State. As a result, the Regulation itself neither contains nor implies an obligation to sign-up to the business register or to electronic waste schemes in each Member State where customers are willing to buy goods/services.

2.3.11. In some cases local taxes are used to subsidise services, e.g. entrance fees 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 a result it does not prohibit the use of local taxes to subsidise certain activities such as entrance fees to local museums or swimming pools.

However, if the subsidized services meet the requirements for the applicability of the Regulation (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 by the Regulation will apply to the service provision in question (see also Question 2.3.12).

At the same time, Recital 27 of the Regulation states 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.

2.3.12. To what extent does this Regulation cover "public services" or parts of the terms and conditions that are subject to certain specific legal requirements?

While non-economic services of general interest are excluded from the scope of the Regulation, this does apply to those "public services" which are normally performed for an economic consideration, hence are services of general economic interest (such as, *inter alia*, gas, water, electricity supply, see also Question 2.1.20).

The Regulation also only applies when all requirements for its applicability are met. Accordingly, the Regulation applies for instance only to services provided by 'traders'. Under 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, such as the administrative activity of public administrations.

On specific legal requirements laid down in EU law or in national law in compliance with EU law, as mentioned above (Question 2.2.4), Article 3 on access to online interfaces does not apply to the extent that the access restriction follows from a legal requirement that the trader is subject to. The same goes for the non-discrimination rules laid down in Article 4.

Example: compliance with regulatory measures imposing specific prices on providers of services of general economic interest is not affected by this Regulation, to the extent that they are compliant with EU law, including general non-discrimination principles.

2.3.13. *What is the impact for business models that rely on localised commercials for subsidised selling prices (for example traders selling tablets with pre-installed advertising that targets users in a specific Member State)?*

It is for each trader to determine what the impact of the Regulation is on their respective business models. Nevertheless, 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.

Example: A Spanish consumer cannot be denied the right to buy a tablet from a German trader, which the consumer picks up in Germany, where such a pick-up option is available to German consumers. However, the trader remains free in principle to define the geographical area where the goods are delivered or can be picked up.

2.3.14. *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) refers to those legal requirements that do not derive from the contractual relationship between the customer and the trader, but are imposed by the Member State of the customer and 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.

Example: If a trader does not direct his or her activities to a specific Member State but sells the good to a foreign customer only in order to comply with the obligations of the Regulation, the trader will not have to comply with the specific labelling requirements of the Member State of the customer.

2.3.15. *Are traders liable when they sell goods or provide services to a customer from another Member State that may be prohibited in the Member State of the customer?*

The Regulation specifies that the prohibition of discrimination laid down in Article 4(1) does not apply in so far as such national rules prevent the trader from selling goods or providing 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 EU rules that prevent a trader from doing so. As a result, the prohibition of discrimination does not mean that traders are no longer bound by EU or national rules of this kind applicable to the trader.

However, as mentioned above, the Regulation further clarifies that mere compliance with the prohibition of discrimination does not, in itself, mean that the trader is under an obligation to comply with non-contractual national legal requirements applicable in the Member State of the customer relating to the respective goods or services or to inform customers about those requirements (Article 4(3)). Therefore, if the trader is not subject to the non-contractual national legal requirement in the Member State of the customer, the mere compliance with the Regulation cannot trigger its liability for compliance in that Member State.

Example: The sale of a specific DVD is subject to different age limits in Sweden and France. A French trader selling a DVD to a Swedish customer with delivery in France merely as a

consequence of the obligation of this Regulation is not liable for compliance with possibly more stringent Swedish age-limits, nor shall inform customers of different age limits applicable in Sweden.

2.3.16. Are restrictions on seasonal promotions affected by this Regulation?

The Regulation does not contain any specific rules on seasonal promotions or on restrictions relating to them. Such promotions are therefore subject to the "normal" non-discrimination rules of the Regulation, where the situation at issue falls within their scope. In such cases, the seasonal promotions should be accessible for consumers/end users from other Member States in non-discriminatory manner.

2.3.17. 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 freedom of traders to organise their commercial policy as they deem fit, as long as they comply with the non-discrimination rules set out in it. The Regulation also does not 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 target specific offers only to a specific territory within a Member State. However, under the Regulation these offers need to be accessible for consumers from other Member States on non-discriminatory basis.

Under the Regulation, traders are therefore 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.

2.3.18. 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. This means that VAT is charged in the Member State where the services are provided or goods are supplied in accordance with the VAT rules. On prices, the concept of "general conditions of access" also expressly covers net sale prices only. Section 4 contains more information on the evolution of VAT rules in the context of e-commerce.

2.3.19. Do traders need to comply with price-fixing legislation for books applicable in the Member State of the customer?

The non-discrimination rules of Article 4 do not prevent traders from applying different prices to books sold 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.

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

Example: A bookstore selling books in France and Belgium is subject to the respective price fixing legislations for sales in Belgium and France respectively.

2.3.20. *Does the Regulation require microenterprises exempted from VAT registration in their Member State to register in other Member States, for instance in the context of the provision of electronically supplied services?*

Compliance with VAT obligations is a particular concern for SMEs, especially in a cross-border context. The importance of not increasing the burden on small businesses is reflected in the Regulation. In particular, the Regulation specifically exempts from the non-discrimination rules of Article 4 traders who fall under a national VAT exemption threshold. As a result, SMEs that are exempt from VAT in the home Member State are not obliged to sell abroad electronically supplied services under Article 4(1)(b).

2.3.21. *Will traders have to comply with the 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 override these rules. It should therefore be determined in accordance with the Rome I and Brussels I Regulations what the applicable consumer protection law is and which courts are competent. This will largely 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 it sets out does not mean that the trader directs his or her activities to another Member State. For further information, please also see Section 4.2.

2.3.22. *Are consumers allowed to demand, on the basis of the Regulation, user manuals/instructions and other product information in their language and accessories geared to their specific own 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 does not affect other EU rules that the trader may be subject to and that might contain relevant consumer protection requirements of this kind. For instance, the Consumer Rights Directive allows Member States to maintain or introduce language requirements on contractual information.

In accordance with the relevant EU rules (notably the Rome I Regulation on the law applicable to contractual obligations), traders are subject to consumer protection requirements that 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 grounds 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.

2.3.23. How does the Regulation impact consumers' rights to a remedy in case the goods sold are defective?

The Regulation does not impact consumers' rights in such cases. The Regulation's main concern is to ensure 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 goods in question later turn out to be defective. For further details, please refer to Section 4.

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. Under the Consumer Sales and Guarantees Directive³⁸, which the Regulation leaves unaffected, the seller is liable to the consumer for any lack of conformity that exists at the time the goods were delivered and the consumer is entitled to have the goods brought into conformity free of charge, by 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 goods need to be repaired or replaced within a reasonable time and without any significant inconvenience to the consumer.

2.3.24. Does the Regulation give customers a right to have after-sales services in the Member State where they reside?

No, the Regulation does not grant any such right. As explained above, the Regulation deals with other issues, particularly those relating to access. The Regulation's prohibition of discrimination should therefore not be understood as affecting the application of any territorial limitation or other limitation on after-sales customer assistance, after-sales services and commercial guarantees offered voluntarily by the trader to the customer. These consumer protection matters are regulated by other acts of EU law, such as the Consumer Sales and Guarantees Directive. As mentioned above (Question 2.3.23), the application of the Regulation leaves this Directive unaffected.

On the other hand, 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.

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

2.4.1. Are traders obliged to accept any type of payment means?

No. Traders are in principle free to decide which means of payment they wish to accept. Article 5 of the Regulation applies to payment transactions made by means of an electronic transaction by credit transfer, direct debit or a card-based payment instrument of the same brand and category of card, where the authentication requirements are met and the payment transactions are in a currency that the trader accepts. However, once this choice has been made traders should not discriminate against customers within the EU by refusing transactions or applying different conditions of payment based on the customers' nationality,

³⁸ 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.

place of residence or establishment or in relation to the location of the payment account, the establishment of the payment service provider or the place of issue of the payment instrument.

2.4.2. Can traders offer different payment means in different webshops? For example, can a trader accept credit and debit cards in his or her Italian webshop but only credit cards in his or her Belgian webshop?

Traders are in principle free to decide under which conditions they offer goods or services, including the payment means they accept on their website. They can therefore decide to offer different conditions on several of their websites. However, if they accept a specific payment means on a specific website, they should also accept that payment means from consumers from outside the Member State that the specific website is targeting.

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

Yes, to the extent that the payment means accepted to settle the invoice falls within the scope of Article 5 of the Regulation, in particular the payment is effected by means of a credit transfer, direct debit or a card-based payment instrument. However, this is without prejudice to limitations on delivery (for instance in case the invoice is paid directly to the carrier) or the possibility to withhold delivery of the goods or provision of the service until the trader receives confirmation that the payment has been properly initiated (see Question. 2.4.7)

Example: A trader of electronic devices offers the possibility to pay upon invoice, by credit transfer or direct debit, and only delivers to Austria and Germany. A trader cannot refuse payment of the invoice from a French bank account or from a French resident. However, this does not require the trader to deliver the device (and consequently to accept settlement of the invoice at the delivery) in France, if this is not provided in the trader's general conditions.

2.4.4. 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 on the Member State in which a credit or debit card is issued, but only against a specific payment brand and category that they accept as payment method.

In practice, this means 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 or debit cards of other brands. It also means that the trader does not have to accept commercial credit cards of a given brand when he or she only accepts consumer credit cards of that brand. However, it means that if a trader accepts credit cards of a given brand issued in one Member State, it needs to accept the same type of credit card of the same brand issued in another Member State.

Example: A Romanian trader used to accept debit cards of a given brand only if they were issued in Romania, and refused payments made with a debit card from the same brand issued in another Member State. This is now prohibited by the Geo-blocking Regulation. However, if the trader's policy in general is to not accept credit cards of that brand, regardless of where they are issued, then that policy can still be maintained.

2.4.5. *Do traders who provide their own credit facilities (as opposed to credit cards offered by a third party) to customers so they can purchase products on their website have to offer these facilities to customers from all Member States?*

Article 5 of the Geo-blocking Regulation applies to transactions made through a credit transfer, direct debit or card-based payment instrument. In other words, Article 5 is about payment and not credit. The provision of a credit constitutes a financial service, and financial services (as all other services excluded from the scope of the Services Directive) are excluded from the scope of application of the Geo-blocking Regulation by Article 1(3). Recital 8 of the Geo-blocking Regulation further clarifies that access to retail financial services should be excluded from its scope. As a consequence, a trader is not obliged to offer credit facilities to customers from all Member States.

2.4.6. *Are traders obliged to enter into agreements with payment initiation service providers covering all banks in Europe?*

No. A trader using payment initiation services, as defined in Payment Services Directive 2³⁹, is under no obligation to accept payment if this means entering into a new or modified contract with a payment initiation service provider, i.e. a provider allowing to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider.

2.4.7. *Are traders 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 it is justified by objective reasons, i.e. where there are no other means available to the trader to reduce the risk of default by customers.

Example: a trader regularly checks credit-worthiness of his/her clients through credit rating systems. A customer, for instance in view of his/her residence, is not included in such systems; in this case the trader can withhold the good and wait for the confirmation of the credit transfer from his/her bank or, in case of direct debit, ask for advance payment with credit transfer before goods are dispatched.

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

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

2.4.9. *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

³⁹ 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.

the use of card-based payment instruments for which interchange fees are not regulated. However, any such charges may not exceed the direct costs borne by the trader for use of the payment instrument.

2.5. Agreements on passive sales (Article 6)

2.5.1. Will traders be allowed to treat customers from other Member States differently, for instance by refusing access to their goods or services, if required by contractual arrangements with suppliers?

A supplier cannot contractually prohibit a trader from responding to unsolicited customer requests, meaning it cannot prohibit so-called "passive sales" in the specific situations covered by the Regulation. Such contractual requirements are automatically void to the extent they fall under the Regulation. In practice, this means that traders should be free to serve all customers independently of their nationality or place of residence.

Example: A Spanish trader cannot be prohibited by its French supplier from serving French customers who found the trader's Spanish website through an internet search and are willing to make a purchase through the Spanish website.

On the other hand, the Geo-blocking Regulation does not affect agreements restricting active sales within the meaning of the Vertical Block Exemption Regulation⁴⁰. "Active sales" mean actively approaching individual customers by for instance direct mail or visits; or actively approaching a specific customer group or customers in a specific territory through advertisement in media, on the internet or other promotions specifically targeted at that customer group or targeted at customers in that territory⁴¹. However, such a restriction could be unlawful under EU competition rules⁴².

2.5.2. Can suppliers prohibit traders from advertising outside their allocated territory?

Restricting so-called "active sales", i.e. actively approaching and targeting individual customers (see Question 2.5.1.) is not affected by the Regulation.

Such active sales may under specific circumstances be restricted in case of so-called exclusive distribution agreements under competition rules (in particular the Vertical Block Exemption Regulation⁴³).

⁴⁰ 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

⁴¹ See Para 51 of Guidelines on Vertical Restraints 2010/C 130/01.

⁴² In addition to Article 101 of the Treaty on the Functioning of the European Union, see also Vertical Block Exemption Regulation and the related Guidelines on Vertical Restraints.

⁴³ See in particular Vertical Block Exemption Regulation and the related Guidelines on Vertical Restraints available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010XC0519%2804%29>.

2.5.3. *Can suppliers prohibit traders from delivering products outside their allocated territory?*

Insofar this form of prohibition does not amount to a restriction of passive sales under Article 6(2) of the Regulation, the legality of such restrictions has to be determined under the competition rules and not under the Regulation.

2.5.4. *Can suppliers require traders to ban customers outside the traders' territory from accessing their website?*

Traders cannot act contrary to the Regulation because their supply agreements require them to do so. Such contractual requirements are automatically void under the Geo-blocking Regulation.

2.5.5. *Article 6 applies as of 23 March 2020 to agreements that are concluded before 2 March 2018 and are compliant with the relevant rules of EU and national competition law. However, if an agreement does not comply with competition law, will enforcement then take place on both the competition rules and the Geo-blocking Regulation or will one take preference over the other?*

The delayed application of Article 6 ensures that companies have sufficient time to adapt their distribution agreements. If the question of the legality of the passive sales restriction comes up as part of a consumer complaint under the Regulation, the designated body responsible for enforcing the Regulation will assess the legality of passive sales restrictions under competition law in the framework of the enforcement of the Regulation.

As before, the legality of passive sales restrictions can also be investigated by a competition authority under the competition rules or it can also be assessed in court proceedings. In practice, competition and consumer protection rules are often enforced by the same national authorities, under different procedures.

3. Enforcement of the Geo-blocking Regulation by Member States

This section mainly aims at clarifying matters related to the enforcement of the Regulation. It is addressed to both Member States authorities, and traders and consumers.

3.1. *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 for its adequate and effective enforcement. They should do so in time for the starting date of the application of the Regulation (i.e. 3 December 2018).

Adequate and effective enforcement might entail several steps, in particular designating the bodies referred to in Article 7(1) and laying down rules on measures applicable to infringements, notably penalties, in accordance with Article 7(2). On the latter, the Regulation requires the measures not only to be effective, but also proportionate and dissuasive. The latter requirement in particular indicates that Member States should seek to prevent infringements, where possible and appropriate. What is possible and appropriate will have to be determined primarily in the light of the circumstances of the case at hand (individual or mass infringement, websites, sales, business-to-consumer or business-to-

business, inclusion in the Consumer Protection Cooperation network or not, etc.), in accordance with the detailed rules of the Member State concerned.

In this regard, Recital 35 of the Regulation clarifies that any authority should have the necessary power to order the trader to comply with this Regulation. The Regulation itself does not contain specific rules on the powers or remedies to be made available (administrative or court injunctions, damages, criminal or administrative penalties, lump-sums). These rules are covered by the national laws of the Member States. On the other hand, if the matter falls within the remit of the CPC Regulation, this Regulation provides for minimum powers of the national competent authority as the power to order the cessation of the infringement. Under the new CPC Regulation, which will be applicable as of 17 January 2020, additional minimum powers will be available to national authorities in cross border cases, such as the power to impose penalties.

The Geo-blocking Regulation is also included in the list of acts covered by the Injunctions Directive⁴⁴, which helps qualified entities to seek injunction measures on behalf of affected consumers if the collective interests of consumers may be harmed. It is also included in the proposal for a Directive on representative actions to protect of the collective interests of consumers⁴⁵, which amends and repeals the Injunctions Directive and would help such qualified entities to seek both injunction and redress measures.

In addition, where it comes to relations between traders and consumers, such enforcement is helped by the inclusion of the Regulation in the Annex to the Consumer Protection Cooperation Regulation⁴⁶. It gives to the competent authorities of Member States powers and tools to ensure an appropriate enforcement of Union law on consumer protection. The CPC enforcement framework covers infringements that have occurred, are occurring or are likely to occur and therefore harm the collective interests of consumers.

3.2. Following this Regulation, which courts have jurisdiction in case of disputes?

The Regulation contains no rules on international jurisdiction. This is governed by the Brussels I Regulation which establishes that, in matters related to a contract concluded between a consumer and a person who pursues professional activities in the Member State of the consumer or who directs his or her 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 whereas proceedings may be brought against the consumer only in those courts. If the trader does not pursue professional activities in the Member State of the consumer or does not direct his/her activities to that Member State, and a consumer initiates a purchase the general rules of the Brussels I Regulation apply; this means that each party can sue the other party in the Member State of the other party's domicile or for contractual matters in the courts

⁴⁴ Article 10 of the Geo-Blocking Regulation amended Annex I of Directive 2009/22/EC.

⁴⁵ Proposal of a Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC, COM/2018/0184 final, point 58 of Annex I.

⁴⁶ The current 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 (CPC Regulation) as revised and replaced from 17 January 2020 by the Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

in the place where the contractual obligation in question is performed (for the sale of goods, the place where the goods were delivered or should have been delivered).

3.3. *In a cross-border situation, on what basis is it decided which Member State is responsible for enforcement? Does it depend on the place of establishment of the trader or the location of the customer?*

The Geo-blocking Regulation does not explicitly address the question about which Member State is responsible for a cross-border violation of the Regulation.

However, in addition to the requirements coming from the principle of sincere cooperation (Article 4(3) TEU), Chapter VI of the Services Directive contains certain general cooperation obligations.⁴⁷ In addition, specific rules on enforcement of cross-border infringements by Member States authorities are provided for in the Consumer Protection Cooperation (CPC) legislation⁴⁸ where it involves intra-Union infringements that harm the collective interest of consumers residing in a Member State other than the one where the act and omission took place or where the supplier is established, or in case of widespread infringements.

For example if a consumer is established in a Member State different from where the trader is established, the consumer could turn to his or her own authority. That authority will be able to seek help from its counterparts in the other Member State concerned. Under this framework, national authorities can cooperate both on the investigation of a case (e.g. identifying the trader) and on the enforcement of a measure (e.g. imposing fines, restricting access to websites etc.)

3.4. *How should these rules be enforced with regard to traders established in non-EU countries?*

The Regulation does not contain any particular rules on enforcement with regard to traders established in non-EU. Depending on the circumstances of the case, such as the existence of international agreements with the non-EU countries concerned or the presence of assets or representatives of the trader in the EU, the competent enforcement authority in the Member State (or Member States) where the breach takes place may take measures to ensure that traders established in non-EU countries comply with the Regulation. Likewise, consumers or businesses affected by non-compliance may themselves seek to enforce their rights under the Regulation also in respect of such non-EU country traders before the competent courts (see also section 4.2). As regards contracts concluded with the consumers, the protective rules in the Brussels I Regulation, which allow the consumers to sue traders in the Member State where the consumer is domiciled may apply regardless of the trader's domicile, i.e. also in relation to traders domiciled in non-EU countries.

⁴⁷ In particular, it provides for the basic obligation of Member States to supervise the providers established in it and to carry out checks, inspections and investigations requested by another Member State, as well as to designate liaison points to simplify administrative cooperation.

⁴⁸ The current 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 (CPC Regulation) as revised and replaced from 17 January 2020 by the Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

3.5. *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.

3.6. *Is there not a risk that a trader might be punished twice for the same violation? How do you mitigate against this?*

In addition to the general obligations on Member States resulting from the principle of sincere cooperation and the ones on cooperation provided for by Chapter VI of the Services Directive, where business-to-consumer relationships are at stake, the Consumer Protection Cooperation (CPC) regulation which was amended accordingly (Regulation (EU)2017/2394) to apply to the Geo-blocking Regulation, provides for an extensive list of measures for consumer protection cooperation authorities to prevent and address EU-wide infringements (intra-EU infringements, widespread infringements or widespread infringement with EU dimension), including infringement of the Geo-blocking Regulation. These include mutual assistance cooperation mechanisms (investigation or enforcement requests), coordinated action in case of widespread infringements or widespread infringements with EU dimension, and an EU wide alert and surveillance mechanism. Effective coordination between the authorities within the CPC network should prevent traders being punished twice for the same action.

3.7. *Could courts be appointed as enforcement bodies?*

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

3.8. *What sanctions or penalties do traders risk if they do not comply with the Regulation?*

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

3.9. *How can Member States communicate the measures to the Commission under Article 7(3)?*

As for the notification obligation under Article 7(3) of the Regulation, Member States are in principle free to choose how to notify the Commission of the required measures. One possibility could be that Member States use the same notification system as under the Consumer Protection Cooperation Regulation, i.e. notification addressed to the Commission through the Permanent Representations of each Member State.

3.10. *Is there a need for specific sanctions when Article 6 of this Regulation is not respected?*

No specific sanction is needed in order to implement Article 6. The sanction provided for in Article 6 is that the relevant provisions in agreements that infringe Article 6 are automatically void and therefore cannot be enforced.

3.11. *Is there any assistance for 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 of explaining the rights of consumers, helping them to settle a dispute with a trader based in another Member State or explaining to them who they should contact or what they should do if the consumer body itself cannot help.

3.12. *What does the practical assistance to consumers in Article 8 entail?*

The Regulation does not provide for the potential elements that the practical assistance laid down in Article 8 should entail. However, this Article takes its inspiration from the existing assistance provided for by Article 21 of Directive 2006/123/EC. Under this Article, assistance to recipients of services includes (i) providing information on the rules applicable; (ii) providing information on the remedies available; and (iii) ensuring mutual assistance with other bodies in other Member States in order to provide the abovementioned information.

3.13. *Can the assistance to consumer bodies designated by each Member State provide assistance to ‘customers’ as defined in Article 2(13)?*

Article 8 of the Regulation is entitled ‘Assistance to consumers’. This means that Member States are obliged to designate a body responsible for providing assistance to consumers. However, this does not prevent Member States from also providing such assistance to undertakings acting as ‘customers’ within the meaning of the Regulation.

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

The Regulation entered into force on the 20th day after its publication in the Official Journal of the EU, namely 22 March 2018. It will apply from 3 December 2018 (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 (24 months after the date of entry into force), with regard to provisions of agreements that are concluded before 2 March 2018 and are compliant with the relevant rules of EU and national competition law.

4. Beyond the Geo-blocking Regulation – e-commerce framework

The Geo-blocking Regulation, and the scope of directly applicable prohibitions of discrimination contained in it, takes into account EU legal acts in various other fields, which might be relevant to e-commerce. This section contains further information on issues that, while not regulated by the Geo-blocking Regulation, are still closely related to its application.

4.1. Cross-border delivery

As mentioned above (Question 2.3.1), the Geo-blocking Regulation does not in itself impose any obligation on traders to deliver goods across the border. The choice of whether to offer customers cross-border delivery in some or all Member States remains in principle a free marketing choice of the trader; however, this should be clearly spelled out in the terms and conditions applicable to the purchase at hand.

4.1.1. Availability and price

Many parcel delivery service providers now offer cross-border delivery services for e-retailers, businesses and individuals, and some also offer dedicated solutions for returns. Examples of cross-border parcel delivery service providers include national postal operators (universal service providers), couriers, integrators, international consolidators, intermediaries (such as parcel brokers and delivery management platforms) as well as some e-retailers and platforms offering their own delivery services.

Moreover, the Commission has launched a number of initiatives in recent years to improve the availability, quality and affordability of cross-border delivery services in Europe. These include Regulation (EU) 2018/644 on cross-border parcel delivery services, which aims to make the prices paid by e-retailers and consumers for basic services such as track and trace services for individual pieces more transparent.

Based on this Regulation, from 2019, the Commission will publish certain tariffs for parcel delivery services on a website so that consumers and e-retailers can easily compare domestic and cross-border tariffs between Member States and between providers. The website will highlight the highest tariffs to encourage consumers and small e-retailers to look for a better deal and National Regulatory Authorities will be required to assess certain tariffs that seem unreasonably high. Regulatory oversight of the growing number of parcel delivery service providers will also be increased. In addition, the Commission has also supported the creation of an information website for e-retailers through its COSME programme⁴⁹; the European Committee for Standardisation has developed a label that can be used by all parcel delivery service providers and is working on a way to measure the transit time of cross-border parcels; finally European e-retail associations have developed trustmarks to give consumers more confidence when buying cross-border.

The development of cross-border parcel delivery services for e-commerce is subject to an ongoing study undertaken on behalf of the Commission services that includes comprehensive surveys of e-retailers and consumers across the EU. There will be a review of the initiative for completing the single market for parcel delivery services in 2020, including consumer protection and the development of standards, as part of the report on the evaluation and implementation of the Regulation on cross-border parcel delivery services.

4.1.2. Cross-border delivery organized by the customer

Where cross-border delivery is not provided by the trader, customers can organize it themselves. In this regard some business models in the parcel delivery sector already exist where pick-up and delivery in other Member States is provided. For example, express and

⁴⁹ <http://deliverineurope.eu/>

courier operators may collect (pick-up) an item directly from the sender/trader, instead of the sender/trader being required to deposit an item at a post office or other facility. Freight-forwarding services could conceivably also evolve to satisfy the consumer's demand for this.

However, transport alone does not qualify as a postal service. Moreover, although value-added services qualify as postal services⁵⁰, they are in fact inherently different from universal postal services and are therefore not subject to the obligations that are inherent to services that fall under the universal service obligations (e.g. affordability) in accordance with Directive 97/67/EC (as amended by Directives 2002/39/EC and 2008/6/EC).

Where customers seek to buy goods across the border and have recourse to third party delivery or forwarding services to their Member States, the following elements may need to be taken into account by traders and customers, in view of the existing EU regulatory framework:

- *Passing of risk:* As regards the passing of risk in delivering the goods sold under the Geo-blocking Regulation, Article 20 of the Consumer Rights Directive provides that the consumer bears the risk of loss of or damage to the goods already as of their delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and the choice of that particular carrier was not offered by the trader.
- *Right of withdrawal period:* Article 9 of the Consumer Rights Directive stipulates the time period for exercising the right of withdrawal, i.e. the withdrawal period expires after 14 days from the day on which the consumer or another person, indicated by the consumer, other than the carrier, acquires physical possession of the goods. Accordingly, handing over the goods to the carrier, even where commissioned by the consumer as part of a sale under the Geo-blocking Regulation, does not yet trigger the start of the 14-day right of withdrawal period.
- *Implications for VAT obligations of a supplier/trader selling goods cross-border:* See the section below on VAT rules.

4.1.3. Cross-border delivery of goods and VAT rules

From a VAT point of view⁵¹, the provision of cross-border delivery for the sale of goods may in certain instances still trigger the requirement of VAT registration in the Member State of delivery, in order to comply with VAT rules in that country.

Cross-border sales of goods to consumers are normally taxed in the Member State where the final consumer is located. This implies that the supplier who transports the goods should register for VAT in the country where transport of the goods to the final consumer ends if the threshold for distance sales of goods is exceeded in the Member State of the final consumer⁵². As of 1 January 2021, the current distance sales thresholds per EU Member State will be abolished. An EU wide threshold of EUR 10,000 will be introduced and will apply to intra-

⁵⁰ Freight-forwarding services only qualify as postal services if, in addition to the provision of transport of postal items, they provide at least one of the other services set out in Article 2(1) of the Postal Service Directive, Cfr. Case C-259/16, para. 34

⁵¹ For a comprehensive list of rights and obligations related to the VAT treatment, suppliers/traders should consult the relevant rules and regulations, see also https://ec.europa.eu/taxation_customs/business/vat_en.

⁵² This threshold is either EUR 100.000 or EUR 35.000, depending on the choice made by the Member State where the transport ends.

EU distance sales of goods and telecommunications, broadcasting and electronically supplied services (TBE services).

When goods are imported from a non-EU country into the EU, there is an exemption from VAT if the value is below EUR 22. As of 2021 this exemption from VAT will be abolished and all imports will be charged with VAT. This will eliminate the competitive disadvantage that currently exists for suppliers established in the EU.

Finally, the Mini-one-stop-shop (MOSS), currently available only for TBE services (see also Section 4.3), will be expanded as from 1 January 2021 into a VAT One Stop Shop (VAT OSS). It will therefore be available also for the suppliers supplying goods and services other than TBE services cross-border to final consumers in the EU, as well as for the importation of low value consignments shipped from non-EU countries to consumers in the EU. For the latter, VAT could be prepaid when purchasing online and declared and paid monthly by a supplier or an intermediary established in the EU if such supplier/intermediary opts to use the One Stop Shop. In these situations, the importation of these goods will be exempt from VAT to avoid double taxation.

The VAT obligations of a supplier/trader selling goods cross-border to customers also depend on the person who is directly or indirectly organising transport to the customer. Thus, where the customer transports the goods himself/herself or where the customer arranges the delivery with a third person and the supplier does not intervene directly or indirectly in providing or helping to organise the dispatch or transport of those goods, the VAT of the Member State from which the goods are delivered (i.e. in the home-Member State) applies to the supplier. On the other hand, in intra EU cross-border supplies to customers where the supplier/trader intervenes directly or indirectly in the transport or dispatch of the goods⁵³, the place of supply for VAT is where transport of the goods ends and the supplier/trader may have to register for VAT in the Member State of the customer.

4.1.4. Cross-border delivery and EU consumers' rules

As mentioned in Recital 28, the Geo-blocking Regulation clarifies that it is "without prejudice to Directives 1999/44/EC and 2011/83/EU". The Regulation therefore does not amend the EU consumer acquis, which continues to apply in situations that fall within its scope (see also Questions 2.3.23 and 2.3.24). Accordingly, a trader will have to comply with these rules⁵⁴.

⁵³ See VAT GUIDELINES no 876: https://ec.europa.eu/taxation_customs/sites/taxation/files/guidelines-vat-committee-meetings_en.pdf (page 205). In particular the the Guidelines reports that the VAT Committee unanimously agreed that the supplier shall be regarded as having intervened indirectly in the transport or dispatch of the goods in any of the following cases: i) where the transport or dispatch of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer; ii) where the dispatch or transport of the goods is provided by a third party but the supplier bears totally or partially the responsibility for the delivery of the goods to the customer; iii) where the supplier invoices and collects the transport fees from the customer and further remits them to a third party that will arrange the dispatch or transport of the goods.

The VAT Committee further agreed almost unanimously that in other cases of intervention, in particular where the supplier actively promotes the delivery services of a third party to the customer, puts the customer and the third party in contact and provides to the third party the information needed for the delivery of the goods, he shall likewise be regarded as having intervened indirectly in the transport or dispatch of the goods.

⁵⁴ See also section 4.2 on rules on applicable (national) law and jurisdiction and the specific clarification provided for in Article 1(6) of the Regulation.

Therefore, on delivery in online sales, this means that clear pre-contractual information about the delivery arrangements should be provided⁵⁵, and that trading websites must indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply⁵⁶. Specifically, traders should indicate the countries to which they deliver (or to which they do not deliver if that is more efficient).

On the right of withdrawal in online sales, sellers can inform consumers, prior to the conclusion of the contract, that they will have to bear the cost of returning the goods in case of withdrawal⁵⁷. If this information is provided, consumers bear the cost of returning the goods⁵⁸, also when the goods have been sold under the Geo-blocking Regulation.

Finally, on guarantees in respect of goods, the Consumer Sales and Guarantees Directive establishes a mandatory guarantee of conformity. Under this Directive, the seller is liable to the consumer for any lack of conformity that exists at the time the goods were delivered and the consumer is entitled to have the goods brought into conformity free of charge by repair or replacement, or failing this, to have the price reduced or the contract rescinded. The seller's obligation to provide repair or replace the goods 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 goods need to be repaired or replaced within a reasonable time and without any significant inconvenience to the consumer.

On top of this mandatory legal guarantee, traders may voluntarily provide commercial guarantees. A commercial guarantee forms part of the commercial policy of a trader, which may offer to consumers certain rights in addition to those provided for by Directive 1999/44/EC. It is subject to the conditions stipulated by the seller (or another trader, such as the manufacturer), which may include limitations in terms of duration, geographical scope of validity and costs covered (such as postage and transport costs). Traders are required to inform the consumer about the existence and conditions of after sale consumer assistance, after-sales services and commercial guarantees as part of the pre-contractual information in distance sales⁵⁹. A commercial guarantee is binding on its offerer in accordance with its conditions⁶⁰.

4.2. Directing of activities and determining applicable law and jurisdiction

EU law provides consumers with special protection in terms of applicable law and jurisdiction to cross-border contracts concluded with traders⁶¹. The choice of forum and applicable law clauses in such contracts that depart from these rules will be disregarded unless they are advantageous to consumers. The trader may therefore be required to apply at least mandatory rules applicable in the Member State of the consumer or to sue, and may be sued, in the Member State of the consumer.

⁵⁵ Article 6(1)g Consumer Rights Directive.

⁵⁶ Article 8(3) Consumer Rights Directive.

⁵⁷ Article 6(1)(i) Consumer Rights Directive 2011/83/EU.

⁵⁸ Article 14(1), second sub-paragraph, Consumer Rights Directive 2011/83/EU.

⁵⁹ Article 6(1)(m) Consumer Rights Directive 2011/83/EU.

⁶⁰ Article 6 Consumer Sales and Guarantees Directive 1999/44/EC.

⁶¹ Articles 17(1)(c) of the Brussels I (revised) Regulation and 6(1) of the Rome I Regulation [Please include a reference to the numbers of the relevant acts.]

Such special protection for consumers applies among other things if the trader "directed his activities" to the Member State of the consumer⁶².

4.2.1. Interpretation by the Court of Justice of the European Union (CJEU)

Several judgments of the CJEU have clarified the concept of 'directing activities' thereby providing guidance for its application.

In its landmark judgment *Pammer/Alpenhof*⁶³ the Court had to decide whether the accessibility of an internet site is sufficient to assume that the trader has directed his activity to the Member State of the consumer's domicile, within the meaning of the provision analogous to Article 17(1)(c) of the Brussels I (revised) Regulation.

The Court ruled that the mere accessibility of an internet site in a given Member States is not sufficient to establish that the trader directed his activities there. On the contrary, to establish this it must be ascertained in the light of the websites and the trader's overall activity that before the conclusion of any contract with the consumer, the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of the consumer's domicile.

The Court developed a non-exhaustive list of criteria that can be used to indicate such intention.

- the international nature of the activity,
- mention of itineraries from other Member States for going to the place where the trader is established,
- use of a language or a currency other than the language or currency generally used in the Member State of the trader with the possibility of making and confirming the reservation in that other language,
- mention of telephone numbers with an international code,
- outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States,
- use of a top-level domain name other than that of the Member State in which the trader is established, and
- mention of an international clientele composed of customers domiciled in various Member States.

However, the following elements do not constitute evidence of such intention:

- the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled, or
- an email address and other contact details, or
- the use of a language or a currency which are the language and/or currency generally used in the Member State of the trader.

⁶² In that regard, recital 24 of Rome I refers to a consistency in interpretation of the substantive scope between the rules in Brussels I (revised) and in Rome I.

⁶³ *Pammer and Hotel Alpenhof*, Joined Cases C-585/08 and C-144/09, EU:C:2010:740.

Subsequent judgments have also clarified two important points on the application of Article 17 of the Brussels I (revised) Regulation. In *Mühlleitner*⁶⁴ the Court ruled that where an activity is directed to another Member State by an internet site the protective rules allowing the consumer to sue the trader in his or her Member State do not only apply if the contract has been concluded at a distance but also if the consumer has travelled to the trader's premises to conclude the contract on the spot.

In *Emrek*, the Court ruled that Article 17(1)(c) of the Brussels I (revised) Regulation does not require a causal link between an internet site and the conclusion of the contract. Consumers may therefore rely on the protective provisions even if they were unaware of the directed activity. However, such a causal link constitutes evidence of the connection between the contract and a commercial or professional activity directed to the Member State of the consumer's domicile.⁶⁵

4.2.2. Clarifications of the Geo-blocking Regulation

The Geo-blocking Regulation does not modify the abovementioned EU rules on applicable law and on jurisdiction. It therefore remains to be assessed on a case by case basis whether a trader is "directing activities" to the Member State of the consumer on the basis of the factual elements of each specific case, also in view of the elements taken into account by the abovementioned case law.

However the Geo-blocking Regulation, provides some *ex lege* clarifications on which pre-contractual activities cannot be included in any such assessment, stipulating that mere compliance with its obligations under the Regulation does not of itself mean that a trader is directing his activities to a particular Member State (Article 1(6) as clarified by Recital 13). The mere conclusion of a contract, (online or off-line), resulting from compliance with the obligations laid down in the Geo-blocking Regulation cannot therefore imply that the trader directs activities to the consumer's Member State. Similarly, a trader cannot be considered to be directing activities exclusively on the basis of the fact that the trader provides information and assistance to the consumer after such a contract has been concluded.

4.3. Mini-One-Stop-Shop for providers of electronically supplied services

For electronically supplied services, including those covered by the Geo-blocking Regulation⁶⁶, the administrative formalities related to VAT compliance in the Member State of consumption in the event of cross-border provision are greatly simplified by the MOSS⁶⁷. This includes the possibility for traders to consult the MOSS Web Portal⁶⁸, which contains information on how to use the MOSS and the applicable VAT rates for the services covered in the different Member States is available.

⁶⁴ Mühlleitner, Case C-190/11, EU:C:2012:542.

⁶⁵ Emrek, Case C-218/12, EU:C:2013:666.

⁶⁶ I.e. services the main feature of which is not the provision of access to and use of copyright protected works or other protected subject matter. These services include for instance cloud services, data warehousing services, web hosting and the provision of firewalls, use of search engines and Internet directories.

⁶⁷ See in particular Council Directive 2006/112/EC of 28 November 2006 and Council Implementing Regulation (EU) 282/2011

⁶⁸ https://ec.europa.eu/taxation_customs/business/vat/telecommunications-broadcasting-electronic-services/

In particular the MOSS enables a supplier/trader to supply the telecommunications, broadcasting and electronically supplied services (TBE) services within the EU without the need to register in each EU country they supply to. All these obligations can be fulfilled from one Member State of VAT identification

There are two types of schemes offered: one for suppliers established within the EU (Union Scheme) and another for suppliers established outside the EU (non-Union Scheme).

A taxable person who opts to use the MOSS is required to register in the Member State of identification.

For the Union scheme this is the Member State in which the taxable person has established his or her business.

If a taxable person has not established his or her business in the EU, it is the Member State in which he or she has a fixed establishment. If the taxable person has more than one fixed establishment in the EU, he or she is entitled to choose one of those Member States to be the Member State of identification. This is the only situation in which a taxable person can choose the Member State of identification under the Union scheme, and the taxable person is bound to that decision for the calendar year in which he or she makes that decision, plus the next 2 calendar years.

In all cases for the Union scheme, the taxable person will be identified for the Mini One Stop Shop with the same individual VAT identification number with which he or she is identified for his or her domestic supplies and VAT returns.

For the non-Union scheme, the taxable person (who has neither a business establishment, nor a fixed establishment in the EU) can choose any Member State to be the Member State of identification. That Member State will allocate an individual VAT identification number to the taxable person (using the format EUxxxxxyyyyz).

In both cases (Union and non-Union schemes), the taxable person can only have one Member State of identification, and all TBE services supplied to non-taxable persons in a Member State in which it is not established must be declared via the MOSS if the taxable person opts to use this system.

A taxable person using either of the special schemes is required to submit, by electronic means, a Mini One Stop Shop VAT return for each calendar quarter, whether or not he or she has actually supplied telecommunications, broadcasting, or electronically supplied services (where no supplies in the EU have been carried out for that quarter, a 'nil return' is submitted). The Mini One Stop Shop VAT return (and accompanying payment) must be submitted within 20 days of the end of the period covered by the return.

The Mini One Stop Shop VAT return contains the details of supplies made to customers in each Member State of consumption by the taxable person using the scheme and, for the Union scheme, by each fixed establishment.

The Member State of identification splits the Mini One Stop Shop VAT return by Member State of consumption, and forwards the details to the various Member States of consumption and establishment.

The Member State of identification generates a unique reference number for each Mini One Stop Shop VAT return, and informs the taxable person of this number. This number is important, as the taxable person must make a reference to it when making the corresponding payment.

The taxable person pays all the VAT due to the Member State of identification. He or she pays one amount for the total of the return (i.e. for every Member State of consumption). The Member State of identification then distributes the money to the respective Member States of consumption.

4.4. Safe, cheap and convenient payments online

The smooth functioning of the Digital Single Market depends on the availability of trusted and affordable electronic payment methods. The Geo-blocking Regulation clearly refers to the revised Payment Services Directive⁶⁹ ('PSD2'), and the corresponding authentication requirements, applicable as from 13 January 2018; new strong customer authentication requirements, moreover, will become applicable as from 14 September 2019, when the relevant delegated act supplementing the PSD2 on this point will apply⁷⁰.

Several recently adopted rules, moreover, contribute to the goal of ensuring trusted and affordable electronic payment methods online.

By giving any person lawfully residing in the EU the right to a basic payment account equipped with an electronic means of payment, the Payment Accounts Directive⁷¹ opens access to the Digital Single Market to all European consumers, enabling them to shop online for goods and services.

The PSD2 offers safe, cost-effective and convenient ways of paying online that benefit both traders and consumers. It enhances trust in online payments thanks to the requirement of stronger customer authentication and to a better protection of users of payment services (reduced liability in cases of fraud). The possibility to use new providers of payment services - payment initiation services- under PSD2 allows every bank account holder, with online banking facilities, to make online purchases, without even using a payment card, and offers traders an innovative and competitive online payment solution.

The new rules under PSD2 prohibit surcharging, which are additional charges for payments made with consumer credit or debit cards, both in shops or online. This reflects the lower costs for traders of accepting most consumer cards in Europe as a result of the capping of the interchange fees under the Interchange Fee Regulation⁷².

⁶⁹ 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

⁷⁰ Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication.

⁷¹ Directive (EU) 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features

⁷² Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions

5. Annex: Implementation timeline of adopted measures related to e-commerce

Implementation timeline of adopted measures related to e-commerce	
13.01.2018	Date of application of revised Payment Services Directive
20.03.2018	Date of application of Regulation on ensuring cross-border portability of online content services
22.05.2018	Date of application of Regulation on cross-border parcel delivery services
03.12.2018	Date of application of Geo-blocking Regulation
01.01.2019	Entry into force of VAT for e-Commerce simplification measures for intra-EU sales of electronic services
01.01.-30.06.2019	First collection of data on parcel delivery service providers (under Regulation on cross-border parcel delivery services)
31.03.2019	First publication of parcel delivery tariffs (under Regulation on cross-border parcel delivery services)
31.07.2019	First affordability assessment of parcel delivery services (under Regulation on cross-border parcel delivery services)
17.01.2020	Date of application of Regulation on Consumer Protection Cooperation
23.03.2020	Date of application of Geo-blocking Regulation passive sales provision (Art 6) to agreements compliant with relevant EU and national competition law, concluded before 02.03.2018
01.01.2021	Entry into force of VAT for e-Commerce measures to broaden scope of one-stop-shop (OSS) beyond the current Mini One Stop Shop (MOSS), elimination of VAT exemption for small consignments, and administrative cooperation provisions

