

Regulation (EU) 2018/302 on geo-blocking now applicable

Posted 10.12.2018

“Geo-blocking” designates the problem of customers not being able to buy goods and services from traders located in a different European Union (“**EU**”) Member State for reasons related to their nationality, place of residence or place of establishment so that they are discriminated against when they try to access the best offers, prices or sales conditions compared to nationals or residents of the trader’s Member State¹.

Regulation (EU) 2018/302 of 28 February 2018 (“**Regulation**”) bans geo-blocking and certain other forms of discrimination. It entered into force on 22 March 2018 and became applicable across the EU on 3 December 2018. Audiovisual services (e.g. the broadcasting of sports events) are, however, excluded from its scope.

It applies to both business-to-consumer (B2C) and business-to-business (B2B) transactions, to the extent that the latter take place on the basis of general conditions of access (hence are not individually negotiated) and for the purpose of end use.

The Regulation prohibits the blocking of a customer’s access to websites, as well as the re-routing to another website without his prior consent, for reasons related to his nationality, place of residence or establishment (Article 3). This prohibition also applies to non-audiovisual electronically supplied services, such as e-books, online music, software and videogames. However, such services are not subject to Article 4 of the Regulation, which prohibits traders from applying different general conditions of access for reasons related to a customer's nationality, residence or establishment. The latter prohibition notably covers three specific situations: when the customer seeks to buy goods without physical delivery, when he receives electronically supplied services (e.g. cloud services) from the trader, and when he receives services other than electronically supplied services in a physical location in the Member State of the trader. It therefore remains possible for a trader from another Member State not to physically deliver goods to a customer in Luxembourg.

The Regulation also provides for a non-discrimination rule regarding payments (Article 5): while traders remain free to offer whatever payment means they want, the Regulation includes a specific provision on non-discrimination within those payment means.

It does not impose an obligation to sell and does not harmonise prices.

A detailed Q&A providing practical guidance is available on the European Commission's website.

Through Bill of Law 7366, Luxembourg is contemplating adopting certain measures concerning the implementation and sanctioning of the Regulation. A specific injunction procedure before the president of the District Court dealing with commercial matters is foreseen to address infringements of the Regulation. It is also available to professional bodies, authorised consumer protection associations and the Minister responsible for consumer protection. In a second stage, violations of injunction orders may give rise to fines of up to 120,000 euros. Further, the *Centre européen des consommateurs GIE Luxembourg* is designated as the body responsible for providing practical assistance to consumers in the case of a dispute with a trader regarding the application of the Regulation.

- 1 A 2016 study conducted for the European Commission revealed that Luxembourg is the EU Member State where the level of cross-border e-commerce is the highest but where the level of geo-blocking related to access is also one of the highest.

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter

ELVINGER HOSS PRUSSEN

Société anonyme, Registered with the Luxembourg Bar, RCS Luxembourg B 209469, VAT LU28861577