



THE GEO-BLOCKING REGULATION IS YOUR BUSINESS COMPLIANT?

From 3 December 2018, businesses operating in the EEA need to comply with the new Geo-Blocking Regulation¹. In general, the Regulation prohibits businesses from unfairly discriminating against consumers or other businesses on the grounds of nationality, place of residence or place of establishment. In particular, the Regulation seeks to prevent the denial or limitation of access to goods and services sold online on these grounds.

1. Regulation 2018/302 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.

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Application

The Geo-Blocking Regulation potentially applies to all businesses offering goods and services for sale in the EEA. It also potentially applies to businesses selling into the EEA from outside the EEA. However, the Regulation does not apply to transactions which take place solely within one Member State of the EEA.

The Regulation covers the sale of goods and services to both consumers and businesses, so long as the business customer is the end user.

Many retail businesses with an online function which currently use geo-blocking practices will be affected. Other examples of businesses which will be affected by the Regulation include providers of electronically supplied services such as cloud services, data warehousing and website hosting, and businesses which provide services in a specific location in the Member State where that business is located, such as hotels, sports events and car rentals.

There are some exceptions to the scope of the application of the Regulation. The Regulation will not apply to, among other things:

- Audiovisual services provided on the basis of exclusive territorial

licence (e.g. broadcasts of major sporting tournaments);

- Retail financial services, including payment services; and
- Transport services, although the scope of this exemption may only apply to sales of tickets for the transport of passengers (existing EU law already contains broad prohibitions on discriminatory practices for this activity). The sale of travel packages and linked package arrangements is not within the scope of this exemption.

Steps to take

Businesses need to review their sales systems – in particular their online sales presence - and may need to remove any measures they have in place which restrict the access of customers on the basis of nationality, place of residence or place of establishment.

Generally, businesses need to ensure that they do not reroute customers attempting to access their territory-specific websites. Rerouting customers from one territory-specific website that a customer has tried to access to another territory-specific website will usually require the customer’s explicit consent. Even when this explicit consent is obtained, subsequent access to the

territory-specific website which the customer originally tried to access must generally not be denied.

In cases where such geo-blocking may be required by EEA or national law, then a reasoned explanation of this should be displayed in the language of the website that the customer is blocked from accessing.

Businesses should also ensure that they do not apply different general conditions of access to goods and services, for reasons related to a customer’s nationality, place of residence or place of establishment, if the customer is seeking to:

- Buy goods which will be delivered to a Member State to which the seller generally offers delivery;
- Buy goods to be collected at an agreed location in a Member State in which the seller generally offers a collection option;
- Receive most electronically supplied services from the seller (e.g. cloud services or use of search engines); or
- Receive services in a physical location within the Member State in which the seller operates (e.g. hotel services or car rental).

Businesses may therefore need to review their delivery arrangements to comply with the Regulation.

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