

The new EU Regulation on Geo-Blocking – What online retailers need to consider

On February 27, 2018, the European Council adopted a regulation to ban unjustified geo-blocking in the single market (EU Regulation 2018/302). The regulation entered into force on March 22, 2018 and will apply – in time for the Christmas business – from December 3, 2018 onwards. The new regulation is another element of the EU's strategy of building a free and secure digital single market. It follows other measures taken by the EU before, such as the ban on roaming charges, the modernization of data protection laws and the allowance of cross-border portability of online content. The present article outlines the key aspects of the new regulation.

The EU is consistently pursuing its strategy of building a free and secure digital single market. In addition to the end of roaming charges, the modernization of data protection laws and the allowance of cross-border portability of online content, on February 27, 2018 the European Council adopted a regulation to ban unjustified geo-blocking in the single market (EU Regulation 2018/302). The regulation entered into force on March 22, 2018 and will apply – in time for the Christmas business – from December 3, 2018.

What is „geo-blocking“?

The term „geo-blocking“ describes a technique used by online retailers for the regional blocking of content. As the internet as such is generally available worldwide and is not regionally limited, geo-blocking therefore serves as a tool to limit access to certain contents, thereby preventing customers from buying goods or services via a website located in another member state. The geo-localization is carried out primarily by evaluating information about the users' IP addresses.

Example: A customer from Germany wants to purchase a certain hi-fi system which a Dutch online shop offers at a particularly low-price. As a consequence of the geo-blocking routines implemented by the retailer's (Dutch) website, however, he cannot access the retailer's Dutch website but is automatically redirected to the retailer's German online shop (so-called re-routing), where the desired hi-fi system can only be purchased at a much higher price or not at all.

Objective and Scope of the Regulation

The objective of the geo-blocking regulation is to prevent consumers and businesses, who are interested in purchasing goods and services in another EU member state from being discriminated against, for example, in terms of prices, sales and payment conditions.

The regulation's application, however, is not absolute. Rather than that, it provides for certain exemptions for constellations in which geo-blocking can be justified. Such constellations for example include services that enable access to and use of copyrighted content, or services that sell copyrighted works in an intangible form, such as music streaming services, e-books, online games, and software products. The geo-blocking regulation does not apply to financial, health and social services either.

Non-discriminatory Access to Goods and Services

In future, online retailers will be barred from using deviating conditions of access to goods and services, for reasons related to a customer's nationality, place of residence or place of establishment, in the following three constellations:

1. The online retailer sells goods that are delivered to a member state for which the online retailer offers delivery, or that are picked up at a location agreed with the customer.
2. The online retailer offers services that are provided electronically (e.g. cloud services).
3. The online retailer provides services that the customers uses in the country in which the online retailer operates (e.g. hotel accommodations and sporting events).

The regulation also prohibits the unjustified differential treatment of customers with regard to payment methods. If, for instance, an online retailer accepts Maestro cards from the

Netherlands for Dutch customers, he is also obliged to accept payment with a Maestro card from Germany.

According to the regulation, each member state shall designate a body responsible for the regulation's enforcement and lay down the rules setting out the measures applicable to infringements of said provisions. The later shall be made publicly available on the EU Commission's website.

Country-specific Differentiations continue to be allowed

This being said, online retailers may continue to apply country-specific pricing, payment and delivery conditions for as long as they do so in a non-discriminatory manner. In our example above, this means that the German customer must be able to use the Dutch website, but only under the terms of the Dutch online shop. He must be offered the same conditions as offered to customers from the Netherlands.

However, if the online retailer generally excludes deliveries to other EU member states, a customer in another EU member state cannot demand delivery to his country of residence. Accordingly, in our example, the German customer would not be entitled to demand delivery to Germany. Instead, he would need to provide a Dutch shipping address, or pick up the goods himself at the retailer (if the retailer offers such an option) or organize the cross-border delivery on his own.

Also, the regulation will not lead to an obligation of online retailers to forthwith sell their products in all EU member states. Addressing customers only in certain member states will remain to be permissible. Price differences caused by deviating rates of statutory VAT amounts as well as other legally determined costs will remain lawful, as well.

Pursuant to the Regulation, any re-routing of the customer to another country version of an online shop will only be permissible with the respective customer's express prior consent.

Practical Recommendations

Online retailers should check whether they are unjustifiably restricting access to their online shops through geo-blocking, or whether they are discriminating against their customers with regard to payment and/or delivery methods. If they wish to position themselves more internationally, existing order and customer forms should be amended accordingly. This includes, in particular, the supply of delivery options abroad or the establishment of domestic pick-up stations as well as the introduction of alternative payment methods. In many cases, the revision of the online retailer's general terms and conditions of sale and delivery should also be taken into consideration.

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