



ASSEMBLY OF THE REPUBLIC
EUROPEAN AFFAIRS COMMITTEE

Written Opinion

COM(2016)289

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on addressing geo-blocking and other forms of discrimination based on customers'
nationality, place of residence or place of establishment within the internal market
and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC**



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PART I – INTRODUCTION

In accordance with Article 7 of Law No 43/2006 of 25 August 2006 on monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union, as amended by Law No 21/2012 of 17 May 2012 and in accordance with the Guidelines for the scrutiny of EU initiatives approved on 8 January 2013, the European Affairs Committee has received the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC. **[COM(2016)289]**

In view of its subject-matter, the initiative was forwarded to the Committee on Culture, Communication, Youth and Sport, which analysed it and approved the Report annexed to this Opinion, of which it is an integral part.

It was also sent to the Legislative Assembly of the Autonomous Region of Madeira, which scrutinised it when assessing the European Commission's Work Programme for 2016 and delivered a favourable opinion, which is also attached.

PART II – RECITALS

1. The general objective of this proposal is improve consumers' access to goods and services within the Single Market, by removing discrimination based, directly or indirectly, on nationality, place of residence or place of establishment, with a view to improving the functioning of the single market.
2. It should be noted that despite Commission guidelines on the application of Article 20(2) of the Service Directive of 8 June 2012 which provide clarification as regards certain situations, such as those covered by this proposal, Member States have



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not adapted national laws to provide more concrete rights to customers or speed up enforcement, nor have traders altered their practice. In this context, and in order to remove the restrictions identified and to increase clarity within existing laws, the Commission has made this proposal for a Regulation, which will have immediate effect on the legal system of Member States, thus ensuring the same level of obligations for consumers, and enabling the uniform application of rules on non-discrimination based on residence across all Member States.

3. It should also be mentioned that this proposal complements other initiatives under the Digital Single Market and Single Market strategies and aims to create the right conditions for improved access to services for consumers and businesses across the Union.

4. Lastly it should be noted that the Reports submitted and approved by the Committee on Culture, Communication, Youth and Sport and the Legislative Assembly of the Autonomous Region of Madeira fully reflect the content of the proposal. Accordingly, they should be reproduced in full in order to avoid repetition of analysis and consequent redundancy.

a) Legal basis

The legal basis for this initiative is Article 114 of the Treaty on the Functioning of the European Union.

b) Principle of subsidiarity

As regards the principle of subsidiarity, it should be noted that, bearing in mind the objectives of this Proposal, namely the prevention of direct and indirect discrimination based on nationality, place of residence or place of establishment of consumers,



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including geo-blocking, in commercial transactions with traders within the Union, cannot be sufficiently achieved by Member States, due to the cross-border nature of the problem and the insufficient clarity of the existing legal framework, but will rather, by reason of its scale and effect on trade in the internal market, be better achieved at Union level, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

In the light of the foregoing, it is considered that this initiative complies with the principle of subsidiarity.

PART III – OPINION

In the light of the information set out above and the Reports from the relevant committee, and also that of the Legislative Assembly of the Autonomous Region of Madeira, the European Affairs Committee's opinion is as follows:

1. This initiative upholds the principle of subsidiarity, insofar as the objective will be achieved more effectively by means of action at European Union level.
2. This concludes the scrutiny of this initiative.

Palácio de São Bento, 26 July 2016

Rapporteur

Chair of the Committee

(Francisca Parreira)

(Regina Bastos)



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PART IV – ANNEX

- Report from the Committee on Culture, Communication, Youth and Sport
- - Report by the Legislative Assembly for the Autonomous Region of Madeira

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Committee on Culture, Communication, Youth and Sport

Report from the Committee on Culture, Communication, Youth and Sport

COM (2016) 289

Rapporteur: Susana Lamas, Member of Parliament

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

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PART I – INTRODUCTION

In accordance with Article 7(1), (2) and (3) of Law No 43/2006 of 25 August 2006 on monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union, as amended by Law No 21/2012 of 17 May 2012, the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC [COM (2016) 289] was sent to this Committee on 8 June 2016, in view of its subject-matter, for examination and drafting of this report.

PART II - RECITALS

1. General

- This Proposal for a Regulation seeks to contribute to the proper functioning of the internal market by preventing discrimination based, directly or indirectly, on the nationality, place of residence or place of establishment of customers.
- Main aspects

This proposal complements other initiatives under the Digital Single Market and Single Market strategies and aims to create the right conditions for improved access to services for consumers and businesses across the Union.

Despite Commission guidelines on this issue, specifically relating to the application of Article 20(2) of the Service Directive of 8 June 2012 which provide clarification as regards situations such as those covered by this proposal, Member States have not adapted national laws to provide more concrete rights to customers or speed up enforcement, nor have traders altered their practice.

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The proposal applies to both traders and customers, i.e. consumers and businesses as end users, and will have positive effects on competitiveness by improving access to goods and services within the internal market for consumers and businesses. It concerns the offline and online environment, taking account of new technological developments where relevant, and is ‘digital and internet ready’.

2. Relevant issues

- Analysis of and opinion on substantive issues relating to the initiative

The vast majority of consumers experienced geo-blocking or other geographically-based restrictions when shopping in another EU country.

The goods and services most affected by geo-blocking are clothing, footwear and accessories, physical media (books), computer hardware and electronics, airplane tickets, car rental, digital content such as streaming services, computer games and software, e-books and MP3s.

This proposal prohibits the blocking of access to websites and other online interfaces and the rerouting of customers from one country version to another. It furthermore prohibits discrimination against customers in four specific cases of the sale of goods and services and does not allow the circumventing of such a ban on discrimination in passive sales agreements. Both consumers and businesses as end users of goods or services are affected by such practices and should therefore benefit from the rules set out in this proposal.

The proposal does not address pricing as such and traders consequently remain free to set their prices in a non-discriminatory manner. It also ensures, for the avoidance of any doubts, that in the case of conflict with Article 20(2) of the Services Directive, the provisions of this Regulation will prevail.

The proposal is compatible with existing Union law on applicable law and jurisdiction.

- Stakeholder consultations

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A major public consultation took place between 24 September and 28 December 2015, in which the opinions of consumers, companies, associations and Member States were sought. 433 replies were received. The results of the public consultation were published and are also contained in the Impact Assessment.

In early 2015, the Commission had extensive discussions with stakeholders (consumers, businesses, consumer and business associations and national authorities), including through stakeholders workshops, to assess various possibilities for EU intervention and their impact.

On 18 February 2016, the Commission held a workshop in Amsterdam to discuss the outcome of the public consultation and possible ways forward.

- Formal examination of the proposal for a Regulation:

The Regulation comprises 11 articles:

- Article 1 specifies the subject matter and the scope of the proposed Regulation.
- Article 2 contains the relevant definitions.
- Article 3 establishes the obligations on traders not to prevent access to their online interfaces on the basis of customers' residence. It also requires the customer's consent for rerouting and requires traders to keep the version of the online interfaces that the customer sought to access before having been rerouted easily accessible.
- Article 4 sets out three specific situations under which discrimination of customers based on residence is prohibited.
- Article 5 lays down non-discrimination rules specifically in the context of payments.
- Article 6 provides that agreements with traders containing passive sales restrictions which would lead to violations of the rules set out in this Regulation

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are automatically void. It is designed to avoid circumvention of those rules by contractual means.

- Article 7 is concerned with enforcement by Member States' authorities.
- Article 8 requires Member States to designate one or more bodies providing practical assistance to consumers in relation to disputes resulting from this Regulation.
- Article 9 is concerned with periodic reviews of the application of the Regulation by the Commission.
- Article 10 provides for two amendments of existing instruments relating specifically to the protection of consumers, namely Regulation (EC) No 2006/2004 and Directive 2009/22/EC.
- Article 11 deals with entry into force and application.

It should be noted that the proposal has no impact on the European Union budget.

- Principles of subsidiarity and proportionality
- ✓ Principle of subsidiarity

The principle of subsidiarity is complied with insofar as legislative intervention by Member States is not sufficient to ensure non-discrimination in cross-border situations. In terms of effectiveness, only an EU intervention can ensure that conditions for customers' access to goods and services do not vary across the Union. EU action will ensure greater legal certainty by clarifying the situations in which different treatment on the basis of residence is deemed discriminatory and therefore prohibited.

- ✓ Principle of proportionality

The proposal aims to facilitate access to goods and services across the Union and creates, in particular, targeted obligations for traders not to discriminate between customers based on residence in specific circumstances. These obligations do not

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extend beyond what is necessary to solve the problems identified and are limited to the situations set out in the proposal. The proposal also increases legal certainty for traders by clarifying the existing obligations and specifying when customers should be treated equally in cross-border purchases. Moreover, the proposal does not impose on traders any disproportionate costs. Costs emerging from the proposal consist mostly of one-off adaption costs.

PART III – CONCLUSIONS

In view of the above, the Committee on Culture, Communication, Youth and Sport concludes as follows:

1. This initiative upholds the principles of subsidiarity and proportionality, insofar as the objective will be achieved more effectively by means of action at European Union level.
2. In view of the subject-matter in question, it is proposed that this Proposal for a Regulation be followed up.
3. The Committee on Culture, Communication, Youth and Sport considers its examination of this initiative to be complete. Pursuant to Law No 43/2006 of 25 August 2006, as amended by Law No 21/2012 of 17 May 2012, this Report must be forwarded to the European Affairs Committee for the appropriate purposes.

Palacio de São Bento, 27 June 2016

Rapporteur

[signed]

(Susana Lamas)

Chair of the Committee

[signed]

(Edite Estrela)

AUTONOMOUS REGION OF MADEIRA

LEGISLATIVE ASSEMBLY

1st Specialised Standing Committee on General Policy and Youth

Report and Opinion

European Commission's Work Programme for 2016 on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

CHAPTER I

Introduction

At the request of the President of the Legislative Assembly, the Specialised Standing Committee on General Policy and Youth met on 28 June 2016 to assess and give an opinion on the Work Programme of the European Commission for 2016.

The request for an opinion was received in the Legislative Assembly of the Autonomous Region of Madeira on 13 June 2016 and was referred to the Specialised Standing Committee on General Policy and Youth, which was asked to provide its opinion by 28 June 2016.

CHAPTER II:

Legal framework and background

The Work Programme is assessed pursuant to Article 229(2) of the Constitution of the Portuguese Republic, Article 36(1)(i) and Articles 89 and 90 of the Political and Administrative Statute of the Autonomous Region of Madeira, approved by Law No 130/99 of 21 August 1999, and also in line with Article 44(j) of the Rules of Procedure of the Legislative Assembly of the Autonomous Region of Madeira.

In view of the subject matter, pursuant to Article 43 of the Rules of Procedure, it falls to the Specialised Standing Committee on General Policy and Youth to give an opinion on behalf of the Legislative Assembly.

CHAPTER III

Assessment of the initiative

A request was submitted for the issuing of an opinion on the adoption of measures addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

In accordance with the document examined, the proposal for a Regulation seeks to contribute to the proper functioning of the internal market by preventing discrimination based, directly or indirectly, on the nationality, place of residence or place of establishment of customers'.

The general objective of this proposal is to give customers better access to goods and services in the Single Market by preventing direct and indirect discrimination by traders artificially segmenting the market based on customers' residence. Customers experience such differences in treatment when purchasing online, but also when travelling to other Member States to buy goods or services'.

It also states that, 'only an EU intervention can ensure that conditions for customers' access to goods and services do not vary across the Union. EU action will ensure greater legal certainty by clarifying the situations in which different treatment on the basis of residence is deemed discriminatory and therefore prohibited'. We would draw attention to the fact that the principles of subsidiarity and proportionality have been complied with in full.

This is because, under Article 229 (ex-Article 227) of the EU Treaty, the Council is required to take the special characteristics and constraints of the outermost regions into account, particularly as regards commercial policy, the supply of raw materials and access to essential consumer goods, without undermining the integrity and the coherence of the Community's legal order, including the internal market and common policies.

We therefore consider it important for this proposal for a Regulation to ensure the continuity of existing measures and of those which prove to be necessary in order to ensure that those residing in this region have access to consumer goods and essential services, even if this necessitates positive discrimination in trade issues.

Thus, in view of the above, the Committee decided that it did not have any objections to this Work Programme of the European Commission for 2016.

CHAPTER IV

Conclusions and opinion

On the basis of its assessment, and bearing in mind the need to ensure the continuity of existing measures and of those which prove to be necessary in order to ensure that those residing in this region have access to consumer goods and essential services, even if this necessitates positive discrimination in the area of commerce, the Specialised Standing Committee on General Policy and Youth decided unanimously to give a favourable opinion on the European Commission Work Programme for 2016 referred to it.

Funchal, 28 June 2016

Rapporteur

[signed]

(Carolina Silva)

Chairman

[signed]

(Adolfo Brazão)