

## LEGAL UPDATE

### **The new Geo-Blocking Regulation applies from today: is your company ready?**

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The new [Geo-Blocking Regulation](#) applies from today. The European regulatory authorities consider the regulation an important element of the strategy for a digital internal market. The phenomenon of "geo-blocking" has been on the agenda of the European Commission for quite some time.

Geo-blocking occurs where traders operating in one Member State block or limit access to their online interfaces, such as websites and apps, by customers from other Member States wishing to engage in cross-border transactions. The best-known and most common example of geo-blocking is rerouting a customer visiting a website in a different country to a website in the customer's own member state.

The Geo-Blocking Regulation prohibits geo-blocking and geo-discrimination:

- Traders may not block or limit access to their online interface based on customers' nationality, place of residence or place of establishment;
- Traders may not reroute customers to a different online interface based on their nationality, place of residence or place of establishment, unless customers give their explicit consent;
- Traders may not apply different terms and conditions of access based on nationality, place of residence or place of establishment.

This prohibition will, incidentally, not result in an obligation for the trader to be active in every EU Member State. Customers must be able to order from a Member State in which the trader is not active. Ordered products can then be collected, for instance, at a pick-up point in a country in which the trader is active. Contrary to price discrimination, the prohibition does not concern price differentiation;

- Traders may not discriminate in respect of the means of payment they accept. This means that a trader who accepts Visa credit cards will have to accept every Visa credit card, regardless of the customers' nationality, place of residence or place of establishment.
- Agreements that limit passive sales (sales in response to spontaneous orders) are null and void.

Current competition law already contains some handles to counteract geo-blocking and geo-discrimination. However, in order for it to apply, there must be an agreement within the meaning of the cartel ban. The prohibition in the Geo-Blocking Regulation ensures that the ban on geo-blocking and geo-discrimination also includes unilateral and intra-group geo-blocking measures.

The question remains, however, whether the Netherlands will penalise violations of the Geo-Blocking Regulation. The legislative proposal appointing the Netherlands Authority for Consumers & Markets as supervisory authority has yet to be adopted.

Are you uncertain whether you have set up your website or terms and conditions in line with this Regulation? We will be pleased to help you find out.

This is a Legal Update from Mariska Nijenhof-Wolters.

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