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### The EU Geo-Blocking Regulation: A Commentary

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# The EU Geo-Blocking Regulation: A Commentary

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September 2024

Image by Kanawat Thongrod

ELGAR COMMENTARIES IN TECHNOLOGY AND INFORMATION LAW

# THE EU GEO-BLOCKING REGULATION

A Commentary



Marketa Trimble





# THE EU GEO-BLOCKING REGULATION

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## I

(Legislative acts)

## REGULATIONS

REGULATION (EU) 2018/302 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 28 February 2018

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 and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) In order to realise the full potential of the internal market, as an area without internal frontiers in which the free movement of, inter alia, goods and services is ensured, it is not sufficient to abolish, between Member States, State barriers alone. Such abolition can be undermined by private parties putting in place obstacles inconsistent with internal market freedoms. That 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 (a practice known as 'geo-blocking'). It also occurs when certain traders apply different general conditions of access to their goods and services with respect to such customers from other Member States, both online and offline. Although such different treatment might, in some cases, be objectively justified, in other cases, some traders' practices deny or limit access to goods or services by customers wishing to engage in cross-border transactions, or some traders apply in this regard different general conditions of access, which are not objectively justified.
- (2) There are different underlying reasons why companies, and in particular microenterprises and small and medium-sized enterprises (SMEs), apply different general conditions of access. In many cases, divergent legal environments, the legal uncertainty involved, the associated risks as regards the applicable consumer protection laws, the environmental or labelling laws, taxation and fiscal issues, delivery costs or language requirements, contribute to traders' unwillingness to engage in commercial relations with customers from other Member States. In other

<sup>(1)</sup> OJ C 34, 2.2.2017, p. 93.

<sup>(2)</sup> Position of the European Parliament of 6 February 2018 (not yet published in the Official Journal) and decision of the Council of 27 February 2018.

# THE EU GEO-BLOCKING REGULATION & BEYOND

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- I. “Geo-location” and “geo-blocking”
- II. EU Digital Single Market
- III. EU Geo-Blocking Regulation
- IV. The future



# I. “GEO-LOCATION” AND “GEO-BLOCKING”

- Geo-location
- Geo-blocking
- Evasion of geo-location / Circumvention of geo-blocking

## II. EU DIGITAL SINGLE MARKET

- 2010 “Digital Agenda for Europe”
  - The need to remove barriers to cross-border transactions
- 2011 “Single Market Act: Twelve levers to boost growth and strengthen confidence”
  - Legislation to be proposed to “rule out geographically based differentiation in e-commerce inside the Single Market”
- 2012 “Communication on Content in the Digital Single Market”
  - The term “geo-blocking” used for the first time



## II. EU DIGITAL SINGLE MARKET

- 2016 EU Parliament resolution “Towards a Digital Single Market Act”
  - The support for addressing the issue by
    - (i) revising existing legislation (E-Commerce Directive and the Services Directive), and
    - (ii) stricter application of EU law, including competition law



## II. EU DIGITAL SINGLE MARKET

- 2015 “Digital Single Market Strategy”
  - A plan for a separate legislation on geo-blocking
- (a) a sector inquiry into e-commerce of goods and digital content in the European Union (competition law-related powers)
- (b) a public consultation on geo-blocking and other geographically-based restrictions when shopping and accessing information in the EU (internal market-related powers)

### III. EU GEO-BLOCKING REGULATION

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- Proposal from May 2016
- Adopted by the Parliament and the Council in February 2018
- Entered into force on 22 March 2018
- Applicable in EU member states on 3 December 2018
- Applicable in the non-EU EEA countries on 1 August 2020



### III. EU GEO-BLOCKING REGULATION

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- The Regulation intersects with
  - Fundamental rights
    - Freedom of expression, freedom and pluralism of the media, freedom to conduct business, right to property, a high level of consumer protection
  - Consumer protection law
  - DSM law
    - E.g., Digital Services Act
  - Copyright law
  - Competition law
  - Data protection law
  - Payment services law
  - Cross-Border Parcel Delivery Services Regulation (2018)
  - Digital Content Directive (2019)
  - Sales of Goods Directive (2019)
  - VAT measures



# III. EU GEO-BLOCKING REGULATION

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- Content of the Regulation (1)
  - Prohibition of unjustified discrimination based on a customer's nationality, place of residence or place of establishment, with respect to
    - Access to online interfaces
    - Access to goods
    - Access to services
      - Physically delivered
      - Electronically supplied
    - Means of payment
  - The “shop like a local” principle

# III. EU GEO-BLOCKING REGULATION

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- Content of the Regulation (2)
  - Relationship with competition law (vertical agreements)
  - Enforcement
  - Assistance to consumers



### III. EU GEO-BLOCKING REGULATION

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- Controversial points in the legislative process
  - Applicability to customers/non-consumers
  - Exception for copyright protected content
    - “services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form” (Article 4(1)(b))
    - Exclusion of audiovisual services
  - Effect on vertical agreements (agreements on passive sales)



## IV. THE FUTURE

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- Regular evaluations of the Regulation by the Commission
  - The first evaluation report from November 2020
- A stakeholder dialogue between November 2021 and December 2022
- Parliament discussions in March 2021
- A joint statement by 54 MEPs in support of territorial licensing options in the audiovisual sector
- A Parliament resolution on barriers to single market from 2022, calling on the Commission to “propose ways to remove unjustified and ineffective geo-blocking and to strive to build a harmonised digital single market.”

## IV. THE FUTURE

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- October 2019 and March 2023 Position Papers by the European Consumer Centres (“ECC”) Network
- Parliament’s resolution on the implementation of the Regulation from December 2023



## IV. THE FUTURE

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- Continuing pressure to eliminate the exception for copyright protected content and for audiovisual services
- Underestimated positive impact of geo-blocking
- Concerns about competition and large scale consolidation
- Complex relationship with diversity



## IV. THE FUTURE

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- Parallel enforcement proceedings
  - Within a member state (by different agencies) and in different member states
  - Questions of jurisdiction, choice of law, and the territorial scope of enforcement
- Compatibility with algorithmic targeting
- Indirect discrimination (as opposed to covert discrimination)
- Relationship with competition law / vertical agreements
- Not easily transferrable to outside the EU
  - Switzerland

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The EU Geo-Blocking Regulation: A Commentary  
(Edward Elgar, 2024)



# MARKETA TRIMBLE ON GEO-BLOCKING

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- Book chapters:

- Geoblocking and “Legitimate Trade” in INTELLECTUAL PROPERTY AND OBSTACLES TO LEGITIMATE TRADE 53 (Christopher Heath, Anselm Kamperman Sanders & Anke Moerland eds., Wolters Kluwer, 2018)
- The Role of Geoblocking in the Internet Legal Landscape, in BUILDING A EUROPEAN DIGITAL SPACE, Proceedings of the 12th International Conference on Internet, Law & Politics (2016)
- Geoblocking, Technical Standards and the Law, in GEOBLOCKING AND GLOBAL VIDEO CULTURE 54 (Ramon Lobato & James Meese eds., Institute of Network Cultures, Amsterdam, 2016)

- Articles:

- Targeting Factors and Conflict of Laws on the Internet, 40 Rev. Litig. 1 (2020)
- Copyright and Geoblocking: The Consequences of Eliminating Geoblocking, 25(2) B. U. J. Sci. & Tech. L. 476 (2019)
- The Role of Geoblocking in the Internet Legal Landscape, IDP, Revista de Internet, Derecho y Política (23) (2017), <http://idp.uoc.edu/articles/abstract/3076/>
- • The Future of Cybertravel: Legal Implications of the Evasion of Geolocation, 22 Fordham Intell. Prop. Media & Ent. L.J. 567 (2012)



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