



# GEO-BLOCKING REGULATION

## WHAT IS GEO-BLOCKING?

**Geo-blocking** refers to practices used for commercial reasons, when online sellers either deny consumers access to a website based on their location, or re-route them to a local store with different conditions (e.g. price).

## WHY IS GEO-BLOCKING IMPORTANT?

Regulation (EC) No 2006/2004 and Directive 2009/22/EC was amended to end unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment with the internal market.

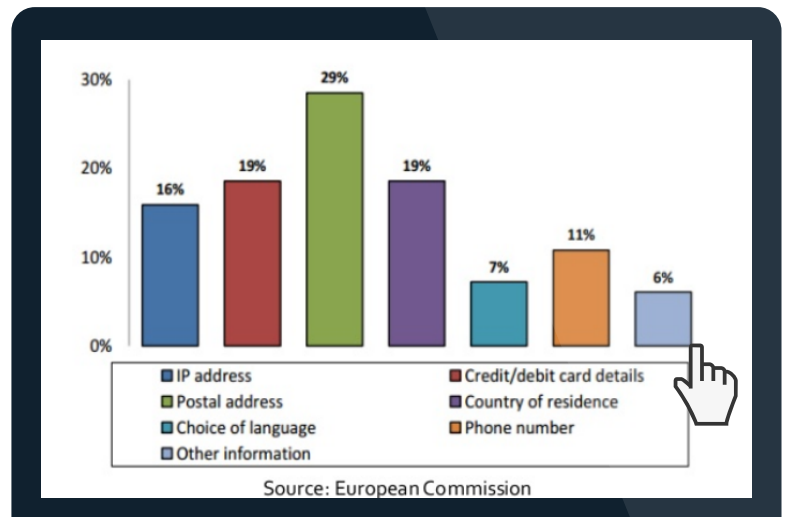
The new set of online rules are established to end this practice.

### Types of geo-blocking:

- Blocking measures (e.g. if you are in Germany and cannot access company.fr website)
- Re-routing measures (e.g. being redirected to another Member State website).
- Restrictive measures (e.g. do not accept Maestro in .fr but only in .be).

### Technical means of geo-blocking:

- IP address based
- Payment system based
- Personal information based



## WHEN WILL THIS APPLY?

Nine months after the regulation will be published in the Official Journal of the European Union. Expected implementation: December 2018 (TBC).

## WHO DOES THIS APPLY TO?

The scope of the Regulation applies to Business to Consumers (B2C) practices, except for customers purchasing for subsequent resale, transformation, processing, renting or subcontracting because it would affect widely used distribution schemes between undertakings in a business to business context.

FESI's position to avoid B2B (manufacturer to retailers) from the scope of the Regulation was supported by the EU legislators.

# A PRACTICAL GUIDE TO THE GEO-BLOCKING REGULATION

## SELLING AND DELIVERING

✔ Website will be obliged to sell the product to any consumer regardless of its nationality or place of residence (in any EU Member State).

BUT

✘ No obligation to deliver to another EU member state

*21(b) This Regulation should **not be understood** as providing for an obligation to deliver goods cross-border to another Member State where the trader would not otherwise offer the possibility of such delivery to its customers.*

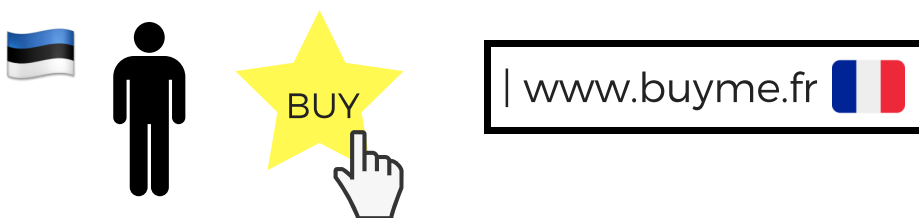
## PRICES

✔ A product can be sold at different prices on different websites within any Member State.

*Article 4 (1.a) The prohibition set out in paragraph 1 shall not prevent traders from offering general conditions of access, **including net sale prices, which differ between Member States** or within a Member State and which are offered to customers on a specific territory or to specific groups of customers on a non-discriminatory basis.*

## EU CONSUMER LAW

✘ Companies do not have to comply with 27 Member States consumer laws.



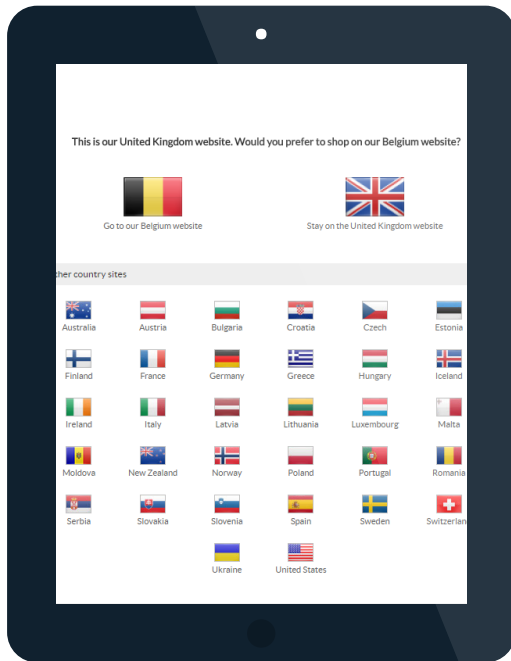
If an Estonian customer buys a product on a French website, and if the website is not directly targeting Estonian consumers, the French consumer law will apply in case of dispute.

✔ In case of passive sales, the applicable consumer law should be the one of the trader's Member State.

# A PRACTICAL GUIDE TO THE GEO-BLOCKING REGULATION

## RE-ROUTING

Re-routing to another website is allowed BUT explicit consent of the consumer is required only the first time the consumer seeks to access the website.



*Article 3. (2) Traders shall not, for reasons related to the nationality, place of residence or place of establishment of the customer, redirect customers to a version of his or her online interface that is different from the online interface to which the customer initially sought access, by virtue of its layout, use of language or other characteristics that make it specific to customers with a particular nationality, place of residence or place of establishment, **unless the customer's explicit consent to such redirection has been given.***

## PASSIVE SALES RESTRICTIONS

Where as under the TFEU Article 101 and regulation 330/2010, certain passive sales restrictions are allowed (e.g. when a retailer is allowed to sell a new product in a new market and has invested substantial money in the distribution of the product).



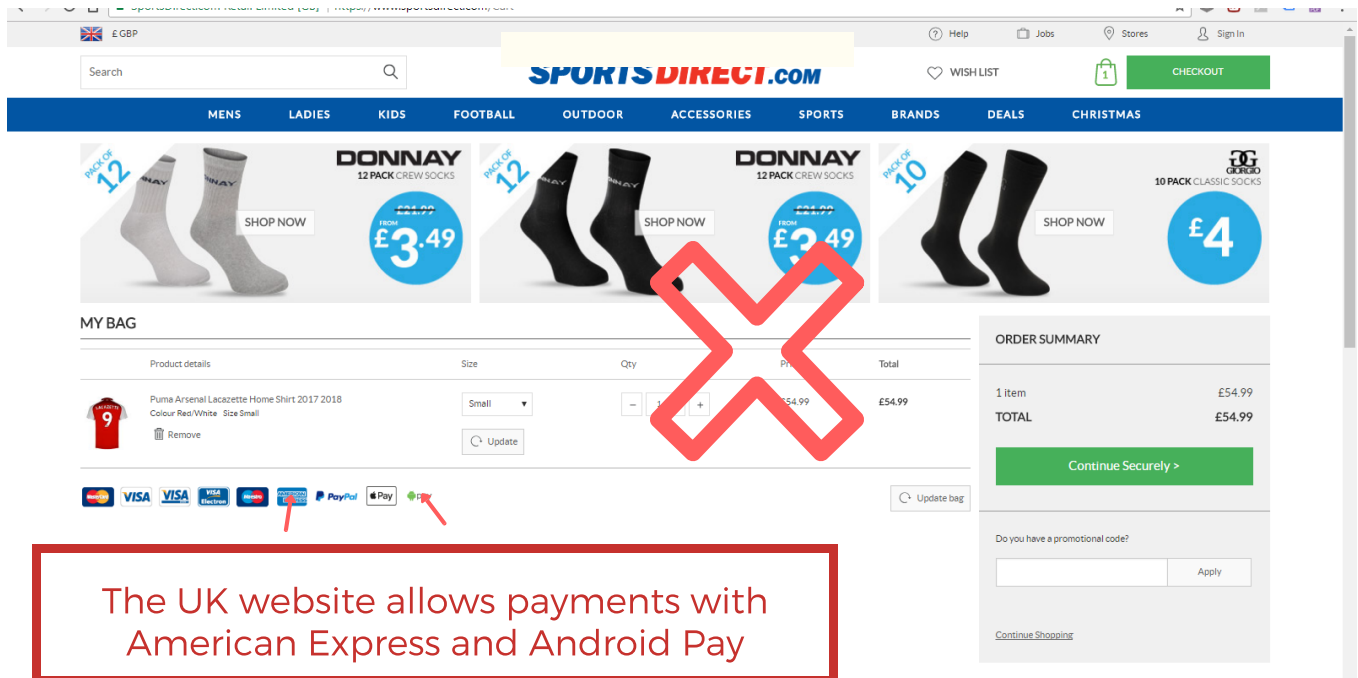
The geo-blocking regulation, however, prohibits restriction on passive sales by the supplier. Therefore, any agreement imposing obligations on traders in respect of passives sales are automatically null and void.

*(26) ...Where such an exemption however applies or where contractual restrictions are not covered by Article 101 TFEU, there is a risk that they could be used to circumvent the provisions of this Regulation. The **relevant provisions of such agreements should therefore be automatically void.***

# A PRACTICAL GUIDE TO THE GEO-BLOCKING REGULATION

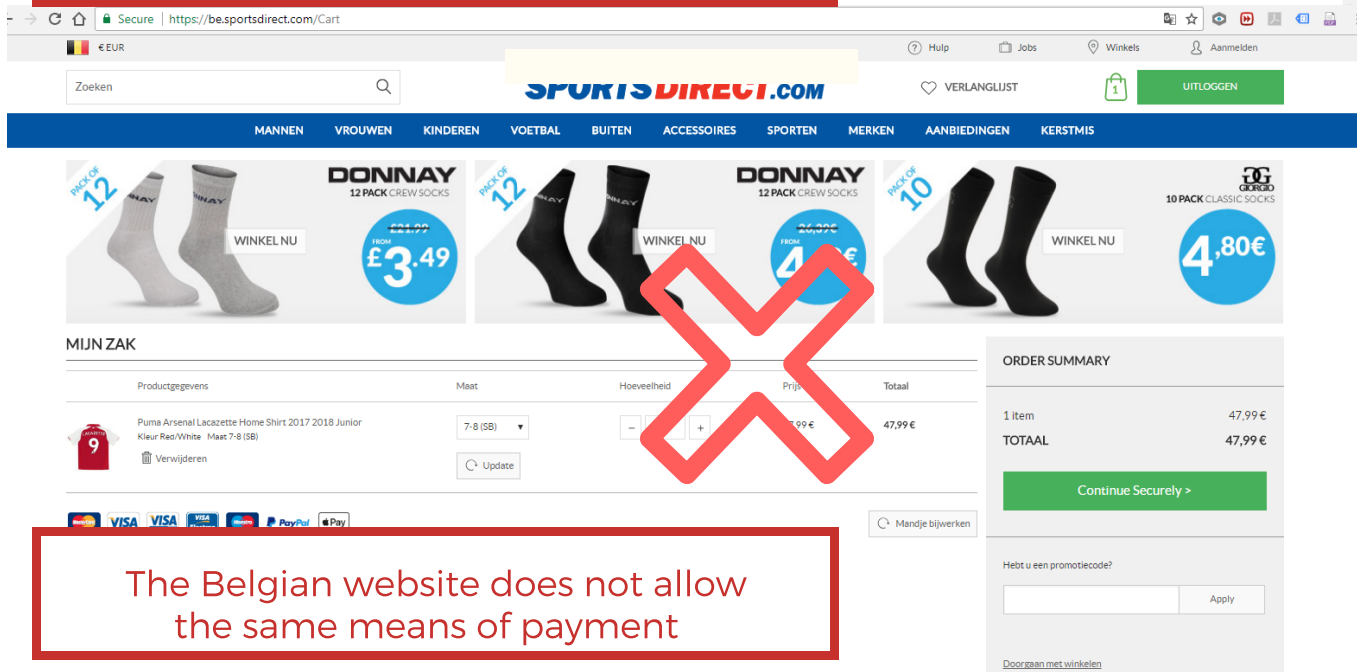
## MEANS OF PAYMENT

Traders will not be allowed to apply different payment conditions for customers for reasons of nationality, place of residence or place of establishment.



The screenshot shows the UK version of the Sports Direct website. The currency is set to GBP (£). The payment methods listed at the bottom of the page include Visa, Visa Electron, Mastercard, American Express, PayPal, and Android Pay. A red box highlights the American Express and Android Pay logos, with a red 'X' over the rest of the page content.

The UK website allows payments with American Express and Android Pay



The screenshot shows the Belgian version of the Sports Direct website. The currency is set to EUR (€). The payment methods listed at the bottom of the page include Visa, Visa Electron, Mastercard, PayPal, and Apple Pay. American Express and Android Pay are not listed. A red box highlights the missing American Express and Android Pay logos, with a red 'X' over the rest of the page content.

The Belgian website does not allow the same means of payment

Article 5 (1) Within the range of payment means that a trader accepts, he or she shall not apply different conditions for a payment transaction, where:

- (a) that payment transaction is made through an **electronic transaction by credit transfer, direct debit or a card-based payment instrument within the same payment brand and category;**
- (b) authentication requirements are fulfilled pursuant to Directive (EU) 2015/2366; and
- (c) the payments transactions are in a currency that the trader accepts.