

Tax & Legal Weekly Alert

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In this issue:

The list of dual-use items has been updated

In order to ensure better control of exports, transfer, brokering and transit of dual-use items, an update was necessary concerning the dual-use list provided by the Council Regulation (EC) 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of such items.

EU Regulation: Unlocking e-commerce in the European Economic Area

Regulation (EU) 2018/302 on the prevention of unjustified geoblocking and other forms of discrimination based on citizenship, nationality or domicile headquarters on the internal market entered into force on December 3rd.

The regulation removes geoblocking, which is a discriminatory practice that prevents online customers from accessing and purchasing products or services from a site based in another Member State.



The list of dual-use items has been up-dated

Starting with 15th December 2018, the Commission Delegated Regulation (EU) 1922/2018 has entered into force, modifying the Council Regulation (EC) 428/2009.

Among the changes we mention:

- in 3E category (Technology), a third note has been added to the 3E001 sub-category, which is meant to exempt from control "Process Design Kits" also;
- regarding the "electronically steerable phased array antennae", some of such items are now exempted from control, due to their main purpose;
- new sub-entry for telecommunications equipment designed to operate above 397 K (124°C) in 5A001 sub-category.

How will these changes impact you?

If you are currently performing or have the intention to perform export, transfer, brokering or transit operations regarding dual-use items according to the Regulation list, we recommend that you reanalyse this list in line with the new Commission Regulation (EU) 2922/2018.

For further questions regarding the aspects mentioned in this alert, please contact us.



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EU Regulation: Unlocking e-commerce in the European Economic Area

The main legal provisions contained in the Regulation

The Regulation contains provisions on the following subjects:

- **Access to online interfaces;**

The Regulation prohibits blocking or limiting customer access to the trader's online interface on grounds of the customer's citizenship, nationality, domicile or headquarters. At the same time, the client can not be redirected, for the same reason, to a version of the online interface different from the one originally accessed by the client, unless his explicit consent has been obtained.

However, blocking and limiting access, or redirecting to another online platform, are allowed if their purpose is to comply with a legal provision, and the trader is obliged to provide the customer with a clear explanation.

- **Consumer's access to goods or services**

The trader cannot apply general conditions for access to the goods and services provided by him / her which are discriminatory with regards to the citizenship, nationality, domicile or headquarters of the customer in cases where the goods are delivered or picked up from an address in a Member State / services are provided electronically or in a physical place located in the territory of a Member State where the trader carries on his business. However, this prohibition does not prevent the trader 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.

- **Non-discrimination for reasons related to payment**

Similarly, the trader cannot apply different conditions based on grounds of citizenship, nationality, domicile or headquarters of the customer, the location of the payment account, the place of the payment service provider or the place of issue of a payment instrument in the European Union as regards the means of payment accepted by it. For the application of this prohibition it is necessary to fulfill all of the following conditions:

- the 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;
- authentication requirements are fulfilled pursuant to Directive (EU) 2015/2366; and
- the payment transactions are in a currency that the trader accepts.

However, if there are objective reasons, the trader has the possibility to postpone the delivery of the goods / services until the payment transaction initiation has been duly acknowledged.

At the same time, the trader can request charges for the use of a card-based payment instrument for which interchange fees are not regulated under Regulation 2015/751 and Regulation 260/2012. Those charges shall not exceed the direct costs borne by the trader for the use of the payment instrument.

- **Agreements on passive sales**

The Regulation shall not affect agreements restricting active sales within the meaning of EU Regulation 330/2010 or those limiting passive sales, provided that transactions constituting passive sales do not infringe the provisions of the Regulation. The provisions on agreements binding traders to such violations are null and void.

With respect to the provisions of agreements concluded before March 2nd 2018, in accordance with Art. 101 TFEU and any equivalent rules of national competition law, the legal provisions presented shall apply from March 23rd 2020.

The need to adopt the Regulation

With regards to the application of the principle of free movement of goods and services within the European Union, it has been found that obstacles imposed on states are no longer sufficient. Thus, to highlight the full potential of the internal market, as an area without frontiers, it is necessary to impose certain restrictions on businesses as they may hinder the free movement of goods and services by decisions that involve blocking or limiting access to their online interfaces for customers from other Member States that want to carry out cross-border transactions (this practice being known as "**geoblocking**").

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.



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