

TALLINN UNIVERSITY OF TECHNOLOGY

School of Business and Governance

Johanna Mäits

**REVISITING THE EUROPEAN GEO-DISCRIMINATION
LEGAL FRAMEWORK: ESTONIAN CONSUMER
PERSPECTIVE**

Master's thesis

Programme Law, specialisation Business Law

Supervisor: Tanel Kerikmäe, PhD

Tallinn 2024

I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

The document length is ...18160... words from the introduction to the end of the conclusion.

Johanna Mäits 03.01.2024

TABLE OF CONTENTS

ABSTRACT	4
INTRODUCTION	5
1. DISCRIMINATION IN THE DIGITAL SINGLE MARKET	8
1.1. Online price differentiation.....	9
1.2. Geo-blocking as a global phenomenon.....	13
2. ANALYSIS OF THE EU NON-DISCRIMINATION FRAMEWORK	17
2.1. Competition Law.....	18
2.2. Consumer Protection Law.....	20
2.3. General Data Protection Regulation.....	23
2.4. Non-Discrimination Provisions.....	26
2.4.1. Services in the Internal Market Directive.....	27
2.4.2. Geo-blocking Regulation.....	28
3. CONSUMERS' LEGAL OPTIONS	31
3.1. Consumer Protection in Estonia.....	33
3.2. Alternative Dispute Resolution.....	36
3.3. Judicial Proceedings.....	42
3.4. Recommendations.....	43
CONCLUSION	47
LIST OF REFERENCES	54
APPENDICES	62
Appendix 1. Non-exclusive licence.....	62

ABSTRACT

Due to the evolving complexity of technology and discriminatory practices, online discrimination can affect individuals without their awareness. This thesis focuses on online consumer discrimination, specifically discrimination based on nationality or place of residence, within the Digital Single Market, with emphasis on Estonian consumers. The research addresses the challenge of navigating EU legal frameworks and aims to raise awareness among the general public, who are often the most impacted. The study conducts a comprehensive literature review and analyses pertinent European directives and laws, exploring regulations such as Competition Law, Consumer Protection Law, General Data Protection Law, Geo-Blocking Regulation, and Services Directive. It assesses Estonian consumer options and potential limitations in addressing discriminatory practices, providing practical recommendations and solutions to combat geo-discrimination in e-commerce. The objective is to offer consumers, policymakers, academics, and practitioners a profound understanding of online price discrimination based on nationality.

Keywords: online consumer discrimination, consumer differentiation, geo-discrimination, price discrimination, e-commerce, consumer protection

INTRODUCTION

Over time, internet access and adoption have rapidly increased, leading individuals to dedicate an increasing amount of their time to online interactions. This results in a significant user base, a lot of data, numerous data processors, and a thriving community of digital buyers. By buying online, consumers may be able to select from a wider range of goods and services, thereby taking advantage of more competitive offers, and making more favourable transactions. Additionally, purchases through cross-border online stores have become popular due to their accessibility and convenience, which makes it possible for comparison shopping and ordering from anywhere in the world.

However, with the increase in online activity rises the possibility of online discrimination, which can affect a extensive number of users and digital buyers. As technology evolves and discriminatory practices become more complex, anyone may be subject to online discrimination without even being aware of it. Currently, businesses use machine learning under the scope of "*artificial intelligence*" to leverage large volumes of "*big data*"¹, which allows businesses to obtain new insights, generate knowledge, and implement informed actions. This enables the optimisation of specific processes and the undertaking of tasks previously considered unattainable².

Over the past few years, European institutions have focused their efforts on combating online consumer discrimination³ by primarily implementing and strengthening legislative and regulatory measures. Although the EU has adopted many laws and regulations to decrease unlawful price discrimination and geo-blocking, it remains a problem in the Digital Single

¹ Jabłonowska, A., Kuziemski, M., Nowak, A. M., Micklitz, H. W., Pałka, P., & Sartor, G. (2018). Consumer law and artificial intelligence: Challenges to the EU consumer law and policy stemming from the business' use of artificial intelligence-final report of the ARTSY project. EUI Department of Law Research Paper, (2018/11).

² *Ibid.*

³ Schulte-Nölke, H., Zoll, F., Macierzyńska-Franaszczyk, E., Sebastian, S., Charlton, S., Barmscheid, M., & Kubela, M. (2013). Discrimination of 16 Consumers in the Digital Single Market. Studies requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO).

Market with businesses unable to adjust⁴. The responsibility for addressing consumer protection issues is a collective effort involving both the European Union and its Member States. Although EU laws concerning consumer protection are developed at the EU level, Member States are responsible for making sure the laws are implemented properly and on time⁵. The EU has addressed online consumer discrimination on the basis of geography only to a limited extent. While various legal precedents exist for geo-discrimination cases, each carries its own constraints, posing challenges to their application. Despite the fact that similar problems exist across all Member States, each of them must address these issues on its own. This is the main reason why the European Commission has prioritised the Single Market: problems should be covered and harmonised at the EU level⁶.

In addition, it is essential to enhance consumer awareness, given that average consumers may find it challenging to ascertain whether they are experiencing online consumer discrimination, let alone identify instances occurring solely based on geographic region. Raising consumer awareness about issues within the Digital Single Market (DSM) enhances the comprehensiveness and effectiveness of information initiatives. Informed consumers are better equipped to recognise violations and are more likely to identify obstacles within the market. Consumers need guidelines to understand and protect their own rights. This problem seems to be very relevant for Estonians, as the author has experienced online consumer discrimination through geo-filtering several times before. Estonia, being one of the smallest countries in the EU with a population of 1.365 million people⁷, it is understandable that Estonians may not be the prime target audience for international companies; many online stores may not even be interested in selling the goods to Estonia. As stated in Article 16 of the Charter of Fundamental Rights of the European Union, everyone has the "*freedom to conduct a business*"⁸. Despite the fact that there is no special knowledge or degree required, it is imperative to adhere to all of the regulations, which can be extremely challenging, especially without any prior knowledge. Thus, one of the reasons why not all companies may be interested in cross-border trading and are engaging in consumer

⁴ Schulte-Nölke, H., Zoll, F., Macierzyńska-Franaszczyk, E., Sebastian, S., Charlton, S., Barmscheid, M., & Kubela, M. (2013). Discrimination of 16 Consumers in the Digital Single Market. Studies requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO).

⁵ Šajin, N. (2019). Protecting European consumers. European Parliamentary Research Service. Retrieved from: https://what-europe-does-for-me.eu/data/pdf/focus/focus22_en.pdf

⁶ European Commission, "A Digital Single Market Strategy for Europe" COM/2015/0192 final

⁷ Statistikaamet. (2023). Rahvaarv. Retrieved from: <https://www.stat.ee/et/avasta-statistikat/valdkonnad/rahvastik/rahvaarv>

⁸ Article 16 of the Charter of Fundamental Rights of the European Union

differentiation can be that the rules which need to be followed can get very complex, be unclear and may differ from country to country.

This legal research aims to furnish evidence that the strategies employed by online stores not only violate consumers' interests but also impede the ultimate objective of the EU's Digital Single Market. The main hypothesis posits that such violations pose significant challenges to the fair and equitable functioning of the digital marketplace, necessitating a comprehensive examination of regulatory frameworks. Potential enhancements are explored to ensure the protection of consumer rights and the integrity of the Digital Single Market.

To address the research question, this thesis utilises qualitative information sourced from legislation, case law, and relevant academic literature. This approach provides a robust foundation for demonstrating the potential effectiveness of the legal safeguards proposed in this paper. It also allows for a nuanced understanding of the legal and regulatory frameworks governing the examined issue.

The primary objective of this legal research is not solely to address the issue of geo-discrimination but, more crucially, to raise awareness among consumers confronting these discriminatory practices. It aims to provide guidance on safeguarding their legal interests and, ultimately, elucidate the diverse legal avenues through which they can assert their rights.

In terms of the thesis structure, the research follows a progression: firstly, identifying the nature of discrimination in e-commerce and determining which practices may result in geo-discrimination. Secondly, inspecting the relationship between geo-discrimination, particularly in terms of price discrimination, and the EU legal framework to establish relations and positions. Thirdly, concentrating on limitations, specifying their scope and examining whether geo-discriminatory practices could fall under them. Fourthly, mapping out consumers' legal options to access these rights and specifying limitations. Lastly, providing practical recommendations and suggestions to combat geo-discrimination. This research aims to contribute to ongoing efforts to promote a more inclusive and non-discriminatory Digital Single Market.

1. DISCRIMINATION IN THE DIGITAL SINGLE MARKET

The digital age has allowed consumers to access goods and services anywhere in the world. Whereas the Digital Single Market offers many benefits, including greater prices and wider selection, it also raises concerns about possible consumer discrimination. Consumer discrimination refers to situations where individuals are unlawfully or lawfully disadvantaged on the basis of one or more protected grounds⁹. These grounds, defined in the EU Charter of Fundamental Rights Article 21, include sex, race, colour, ethnic origin, genetic features, language, religion, belief, political or other opinions, membership in a national minority, property, birth, disability, age, or sexual orientation¹⁰. While every instance of consumer differentiation can be considered unfair and potentially lead to price discrimination, not all of these practices are necessarily illegal. Customers can be offered different prices all the time, for example, companies are allowed to create loyalty programs by giving discounts or offering free products to their clients¹¹.

In recent years, it has become more evident that businesses, especially service providers, often limit their activities to a single country or a small group of countries¹². This results in consumers feeling excluded from the internal market¹³ and unable to take advantage of the free movement of goods within the European Union, possibly leading to frustration. In most cases, businesses claim that discrimination against their clients is not intentional¹⁴ and could be attributed to an algorithm that considers thousands of data points¹⁵, or simply due to their desire to establish exclusivity in the market, coupled with a lack of awareness of regulations. Although, it is crucial

⁹ Council of Europe, European Court of Human Rights, European Union Agency for Fundamental Rights. (2019). Handbook on European non-discrimination law : 2018 edition, Publications Office of the European Union. <https://data.europa.eu/doi/10.2811/792676>

¹⁰ Article 21 of the Charter of Fundamental Rights of the European Union

¹¹ Belli, A., O'Rourke, A. M., Carrillat, F. A., Pupovac, L., Melnyk, V., & Napolova, E. (2022). 40 years of loyalty programs: how effective are they? Generalizations from a meta-analysis. *Journal of the Academy of Marketing Science*, 50(1), 147-173.

¹² Duch-Brown, N., & Martens, B. (2016). The economic impact of removing geo-blocking restrictions in the EU Digital Single Market. Néstor Duch-Brown, Bertin Martens.

¹³ Bourreau, M., & De Streel, A. (2018). The regulation of personalised pricing in the digital era.

¹⁴ Pehrsson, E. (2018). The meaning of the GDPR Article 22. *European Union Law Working Papers*, (31), 37.

¹⁵ Pike, Chris. (2016). Price Discrimination. OECD Competition Papers, 2016, Available at SSRN: <https://ssrn.com/abstract=3481907> or <http://dx.doi.org/10.2139/ssrn.3481907>

that these discriminatory practices are conducted in an ethical manner and in compliance with the law. Ultimately, consumers should have the same level of protection and fairness guaranteed online as it is offline¹⁶. Therefore, companies should disclose their practices to consumers and provide them with transparent information, as some practices can be justified and some not. Consumers should also be informed about how to refuse price discrimination and be given a clear explanation of how discriminatory practices are carried out. Additionally, companies should be held accountable for any unethical or illegal practices. As mentioned before, one of the most problematic result of price discrimination is that consumers may not be aware of it.

1.1. Online price differentiation

Online businesses may use discriminatory pricing strategies, resulting in consumers paying different prices for the same product, which leads us to the topic of price differentiation¹⁷. To examine its legal limitations, it is crucial to understand what constitutes price discrimination¹⁸. Professor Borgesius provides a simple definition of online price discrimination: “*when online retailers differentiate their prices for identical products based on information they have about a customer*”¹⁹. This leads us to the topics of „*price differentiation*“, „*personalised pricing*“, „*algorithmic pricing*”²⁰ and „*geo-pricing*“. However, when talking about price discrimination, the term should be viewed neutrally due to its fundamental role in economic analysis, even though the word „discrimination“ is traditionally viewed negatively²¹.

Price discrimination occurs when a trader sells or offers two similar or identical products with the same marginal cost of production to consumers at different prices²². As an example, „*personalised pricing*“ has been an immensely common practice of showing different prices to distinct people for the same item²³, for instance while purchasing plane tickets or reserving

¹⁶ European Commission, “New Consumer Agenda Strengthening consumer resilience for sustainable recovery” COM/2020/696 final

¹⁷ Steppe, R. (2017). Online price discrimination and personal data: A General Data Protection Regulation perspective. *Computer law & security review*, 33(6), 768- 785.

¹⁸ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

¹⁹ Borgesius, F. Z. (2019). Algorithmic decision-making, price discrimination, and European non-discrimination law. *European Business Law Review (Forthcoming)*.

²⁰ Noble, S. U. (2018). Algorithms of oppression. In *Algorithms of oppression*. New York university press.

²¹ Borgesius, F. Z. (2019). Algorithmic decision-making, price discrimination, and European non-discrimination law. *European Business Law Review (Forthcoming)*.

²² *Ibid.*

²³ Hannak, A., Soeller, G., Lazer, D., Mislove, A., & Wilson, C. (2014, November). Measuring price discrimination and steering on e-commerce web sites. In *Proceedings of the 2014 conference on internet measurement conference* (pp. 305-318).

accommodations. Some customers may end up paying significantly more than others for the same product or service, which can be controversial and unfair.²⁴ Regularly used promotional tools, such as coupons, price margin, occupation- or student discounts, retail incentives, bonus packs, as well as free samples, are regularly used to maximise revenue across industries²⁵. These promotional tools are also considered a part of price discrimination as they differentiate between customers. Hence, customer differentiation was initially used in physical stores, but with the advancement of technology, it has shifted to the internet. The digital revolution has ushered in the age of "big data" which can produce a significant amount of data in our daily lives through online interaction, making it easier to use promotion tools online²⁶. Therefore, price differentiation and consumer discrimination have become easier²⁷. Algorithms can establish consumer profiles²⁸ by considering various factors like location, device usage, past online purchases, and behaviours. These profiles enable suppliers or sellers to provide customised prices, potentially reinforcing discrimination based on differences in consumer profiles^{29,30}.

Price discrimination can traditionally be distinguished into three categories³¹:

- *first-degree* price discrimination;
- *second-degree* price discrimination; and
- *third-degree* price discrimination.

First-degree price discrimination occurs when a product is sold at the exact maximum price³² that each customer is willing to pay for the product, also known as personalised pricing³³. For the first degree price discrimination, commonly referred to as „*perfect*“ price discrimination, the company needs full information concerning consumer preferences³⁴. Most economists have

²⁴ Bourreau, M., & De Streel, A. (2018). The regulation of personalised pricing in the digital era.

²⁵ Ndubisi, N. O. (2005). Gender differences in customer behavioural responses to sales promotion. *Asia Pacific Management Review*, 10(3), 175-185.

²⁶ Townley, C., Morrison, E., & Yeung, K. (2017). Big data and personalized price discrimination in EU competition law. *Yearbook of European Law*, 36, 683-748.

²⁷ See: Hannak, A., Soeller, G., Lazer, D., Mislove, A., & Wilson, C. (2014, November). Measuring price discrimination and steering on e-commerce web sites. In Proceedings of the 2014 conference on internet measurement conference (pp. 305-318).

²⁸ Noble, S. U. (2018). Algorithms of oppression. In Algorithms of oppression. New York university press.

²⁹ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1

³⁰ See: Kominers (2017) on price discrimination by Uber (<https://perma.cc/2T8E-J5K8>).

³¹ Aguirre, I. (2009). Chapter 1: Monopoly II. Notes on Microeconomic Theory IV.

³² Hannak, A., Soeller, G., Lazer, D., Mislove, A., & Wilson, C. (2014, November). Measuring price discrimination and steering on e-commerce web sites. In Proceedings of the 2014 conference on internet measurement conference (pp. 305-318).

³³ Bergemann, D., Brooks, B., & Morris, S. (2015). The limits of price discrimination. *American Economic Review*, 105(3), 921-57.

³⁴ Aguirre, I. (2009). Chapter 1: Monopoly II. Notes on Microeconomic Theory IV.

criticised it as being impossible to observe in practice³⁵; therefore, this concept used to be extremely rare in practice, but with the rise of "big data" offering insights into individual behaviour, has made it more widely adopted and also accepted by consumers³⁶. Obtained data assists in estimating what people are willing to pay more easily, thus personalised pricing has become more common³⁷. The process itself can benefit both customers and traders, as retailers can charge higher prices to potential clients, while offering lower prices to individuals with less intention to make a purchase. However, the lack of transparency in algorithms can make it unclear how prices are determined for individuals, raising concerns that these pricing decisions may violate anti-discrimination laws by potentially relying on factors such as ethnic origin or gender³⁸.

For instance, in the year 2000, Amazon sold DVDs at varying prices to different customers. This sparked widespread frustration and concerns about fairness³⁹. In response, Amazon claimed it was an experiment, leading to refunds for customers who had paid a higher price⁴⁰. Nevertheless, in 2012, consumers discovered again that the prices of items on Amazon.com exhibited significant variability. For example, a consumer added an item to the shopping basket, initially priced at \$54.99. However, within a few minutes, the price for the same item in the basket increased to \$79.99. Subsequently, after clearing the cart and attempting to add the item again, the price was reverted to \$59.99⁴¹.

Second-degree price discrimination involves offering lower prices to specific groups of consumers, achieved through bulk purchasing, which is also known as non-linear pricing⁴². Each customer faces the same price catalogue, but prices are affected by the quantity purchased⁴³. As a

³⁵ Carlton, D. W., & Perloff, J. M. (2005). Modern industrial organization.

³⁶Hannak, A., Soeller, G., Lazer, D., Mislove, A., & Wilson, C. (2014, November). Measuring price discrimination and steering on e-commerce web sites. In Proceedings of the 2014 conference on internet measurement conference (pp. 305-318).

³⁷ Shiller, B. R. (2013). First degree price discrimination using big data (p. 32). Brandeis Univ., Department of Economics.

³⁸ Drechsler, L. (2018). The price is (not) right: Data protection and discrimination in the age of pricing algorithms. *European Journal of Law and Technology* (2018), 9(3)

³⁹ Townley, C., Morrison, E., & Yeung, K. (2017). Big data and personalized price discrimination in EU competition law. *Yearbook of European Law*, 36, 683-748.

⁴⁰ Ward, M. (2000). Amazon's old customers' pay more?. URL <http://news.bbc.co.uk/1/hi/business/914691.stm>.

⁴¹ *Ibid.*

⁴² Bergemann, D., Brooks, B., & Morris, S. (2015). The limits of price discrimination. *American Economic Review*, 105(3), 921-57.

⁴³ Aguirre, I. (2009). Chapter 1: Monopoly II. Notes on Microeconomic Theory IV.

result of the choice being made by the consumer and not by the seller, the discrimination is not direct⁴⁴. It is the consumers' decision whether to take part in such an offer.

Third-degree price discrimination occurs when different prices are charged to different groups of customers⁴⁵, based on consumer's characteristics⁴⁶. The company receives an exogenous sign that enables it to classify consumers into different groups, such as students, seniors etc⁴⁷. Third-degree discrimination is the most common form of price discrimination and is widely practiced. Online, this consumer differentiation can be achieved by utilising a customer's cookie, IP address, or user log-in information to identify⁴⁸. However, online profiles can be much more detailed, allowing for more refined price discrimination. Consequently, online third-degree price discrimination can, at least in theory, approach the seller's ideal of perfect or first-degree price discrimination, where all consumer surplus is extracted to the benefit of the seller⁴⁹. One specific technique with tracking ability used in digital mapping and analysis to distinguish consumers by collecting geographic data about its customer⁵⁰ is geo-filtering, which can be a very useful tool for the trader to intentionally discriminate based on location. It allows traders or developers to refine consumers by specific geographic boundaries, such as countries or cities. Furthermore, it is crucial to tackle commercial practices that disregard consumers' rights to make informed choices, exploit their behavioral biases, or undermine their decision-making abilities⁵¹. Such practices may involve the utilisation of "dark" patterns, specific personalisation methods often relying on hidden advertising, profiling, fraudulent activities, dissemination of false or misleading information, and manipulation of consumer reviews⁵².

Price discrimination practises are primarily executed through promo-tools, whereas it can thus be achieved with the help of cookies, IP addresses and with geo-filtering, which allows consumers to be filtered per country. This paper is focusing on consumer differentiation based on the

⁴⁴ Pike, C. (2016). Price Discrimination. OECD Competition Papers, 2016, Available at SSRN: <https://ssrn.com/abstract=3481907> or <http://dx.doi.org/10.2139/ssrn.3481907>

⁴⁵ Carlton, D. W., & Perloff, J. M. (2005). Modern industrial organization.

⁴⁶ Pike, C. (2016). Price Discrimination. OECD Competition Papers, 2016, Available at SSRN: <https://ssrn.com/abstract=3481907> or <http://dx.doi.org/10.2139/ssrn.3481907>

⁴⁷ Aguirre, I. (2009). Chapter 1: Monopoly II. Notes on Microeconomic Theory IV.

⁴⁸ Zuiderveen Borgesius, F., & Poort, J. (2017). Online price discrimination and EU data privacy law. *Journal of consumer policy*, 40, 347-366.

⁴⁹ Zuiderveen Borgesius, F., & Poort, J. (2017). Online price discrimination and EU data privacy law. *Journal of consumer policy*, 40, 347-366.

⁵⁰ Bar-Gill, O. (2018). Algorithmic price discrimination: When demand is a function of both preferences and (mis) perceptions. Forthcoming, *University of Chicago Law Review*, 86, 18-32.

⁵¹ European Commission, "New Consumer Agenda Strengthening consumer resilience for sustainable recovery" COM/2020/696 final

⁵² *Ibid.*

consumer's location or nationality, thus, when delving into the subject of consumer discrimination based on location, it is crucial to also address the topic of geo-blocking.

1.2. Geo-blocking as a global phenomenon

With the increasing capabilities of big data, the potential for online discrimination based on consumer location has also increased⁵³. The term “*geo-blocking*” refers to the practice of blocking or restricting access to an online interface, such as a website, for customers from another Member State wishing to conduct cross-border transactions⁵⁴. As a result, it may not only affect the individuals involved, but could also impede the ultimate objective of the EU's digital single market⁵⁵ by restricting consumers from fully utilising the benefits of free movement of goods within the European Union. This limitation creates a barrier that hinders the achievement of the Digital Single Market's purpose.

Three common unfair market practices distinguishing between different consumers within the Digital Single Market are simple refusal to sell, automatic re-routing, and unjustified diversification of sale conditions⁵⁶.

Firstly, some virtual stores may refuse to accept online purchases from customers with IP addresses from certain countries⁵⁷, which means that a foreign consumer is not able to order from a certain online shop⁵⁸. Usually, a refusal to sell occurs during one of the stages of placing an order. A consumer often discovers that placing an order is impossible, because it requires an address in a specific country. It should be noted that the seller may not always be directly responsible for the refusal to sell, it may come from manufacturers, who impose discriminatory

⁵³ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

⁵⁴ European Commission, “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/2016/0289 final - 2016/0152 (COD)

⁵⁵ TFEU Article 26 (2) “*the free movement of goods, persons, services and capital*”

⁵⁶ Schulte-Nölke, H., Zoll, F., Macierzyńska-Franaszczyk, E., Sebastian, S., Charlton, S., Barmscheid, M., & Kubela, M. (2013). Discrimination of Consumers in the Digital Single Market. *Studies requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO)*.

⁵⁷ *Ibid.*

⁵⁸ Bourreau, M., & De Streel, A. (2018). The regulation of personalised pricing in the digital era.

practises on their distributors⁵⁹. Nevertheless, under Geo-blocking Regulation, which will be discussed in Chapter 2.4.2, the trader is not obliged to deliver across borders⁶⁰.

The second strategy consists of using automatic re-location and directing the customer to another online store without the customer's consent or the website is entirely unavailable⁶¹. A consumer, who experiences these practices may feel frustrated as they are excluded from the internal market, or potentially discriminated against because of their location or nationality.

The last common market practice involves accepting orders from particular groups of consumers or countries under different terms and conditions⁶². For example, individuals ordering from abroad often face higher delivery costs, which are often significantly higher than those for domestic orders.

The author has experienced a similar situation in 2021 with Swedish online shop Y.com, which sells various brands. The author was looking at the Danish interior brand Z, when all of the sudden the brand vanished from the website like it was never there. After the incident, the author sent an e-mail to Y.com and their response was *“From now on Z is only available in a few countries on Y.com (Sweden, Denmark, Norway and Finland). If you are trying to place an order from another country, the item will automatically disappear from the cart, as this brand is not available in that country. Please kindly note that the brands on Y.com decide which countries their products are available in and this is not a decision that Y.com takes. Please kindly note that this has nothing to do with discrimination, this has to do with customs and taxes.”* This may cause some extent of frustration to Estonian customers, as they could still buy products from this brand, but only directly from their own website and warehouse in Denmark. However, the product prices and the delivery costs are higher as a result of the geo-blocking phenomenon. Therefore, it can be assumed that the brand Z is imposing discriminatory practices on Y.com without any objective reason.

⁵⁹ Schulte-Nölke, H., Zoll, F., Macierzyńska-Franaszczyk, E., Sebastian, S., Charlton, S., Barmscheid, M., & Kubela, M. (2013). Discrimination of Consumers in the Digital Single Market. *Studies requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO)*.

⁶⁰ Recital (23) of the Geo-blocking Regulation (REGULATION (EU) 2018/302)

⁶¹ Schulte-Nölke, H., Zoll, F., Macierzyńska-Franaszczyk, E., Sebastian, S., Charlton, S., Barmscheid, M., & Kubela, M. (2013). Discrimination of Consumers in the Digital Single Market. *Studies requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO)*.

⁶² *Ibid.*

Nevertheless, it is generally identified that geo-blocking can have a objective justification⁶³ and be necessary for specific reasons, such as licensing restrictions and copyright, VAT regulations, asserting consumer protection laws, and other national rules. Geo-blocking might be essential to ensure that people in one country don't access copyrighted content or use licensed services meant for another country. For instance, preventing access to movies or TV shows in a region where the rights have not been secured. These restrictions primarily affect short-term travellers and migrants who have subscribed to online content services in their country of residence and are unable to access the same service when in another Member State⁶⁴ (for example, Netflix and iTunes⁶⁵). In addition, some countries have higher consumer protection laws, and geo-blocking may be used to comply with these regulations, such as limiting the sale of products that do not meet specific safety standards. In 2017, the author experienced justified geo-blocking while visiting Shanghai, China. There was no access to Facebook, Instagram, Whatsapp, Youtube, or Google, therefore, Whatsapp had to be replaced with WeChat, and Google had to be replaced with Yahoo. Disappointment arises as consumers quickly develop familiarity and loyalty to certain apps. Moreover, this necessitates that the other party, with whom communication is essential, also undergoes the process of downloading the corresponding apps.

On the other hand, unjustified geo-blocking practices may have discriminatory effects and can intentionally disadvantage consumers, particularly when blocking access based on location, without any associated Intellectual Property Rights or copyright issues that might necessitate such restrictions. The survey by the European Commission in 2015 confirmed that 45% of responding companies and business associations acknowledged implementing geo-blocking practices in the course of their business⁶⁶. When geo-blocking is used as discriminatory practice, it may result in charging higher prices.

⁶³ European Commission, “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/2016/0289 final - 2016/0152 (COD)

⁶⁴ Mazziotti, G. (2015). Is geo-blocking a real cause for concern in Europe?. EUI Department of Law Research Paper, (2015/43).

⁶⁵ Roy, A., & Marsoof, A. (2017). Geo-Blocking, VPNs and Injunctions”. European Intellectual Property Review, 39(11), 672-680.

⁶⁶ Simonelli, F. (2016). Combatting Consumer Discrimination in the Digital Single Market: Preventing Geo-Blocking and other Forms of Geo-Discrimination.



Figure 1. Screenshot from entering the Finnish brand X website (13.07.2022)

The author has encountered consumer inequity and price discrimination through the use of geo-filtering techniques employed by the internationally recognised Finnish brand X. The brand operates two distinct websites (see Figure 1), xxx.com and xxx.fi, where prices can vary significantly. Notably, sales prices are often more favourable on the Finnish website, xxx.fi, and it is not uncommon for discounts to be exclusive to xxx.fi, not available on xxx.com. The author has been keeping a close eye on this pricing strategy since 2021. It has been easy to observe, as consumers can easily access both websites and monitor the price differences. However, it is worth noting that only consumers with a Finnish delivery address can order from the Finnish website xxx.fi. Despite the fact that the company is not required to deliver goods to all countries, this company does so with their other website, and the goods are stored in the same warehouse located in Finland. The terms and conditions do not mention the price differentiation, suggesting there is no objective reason. Therefore, it can be assumed that consumers, except Finnish consumers, are targeted for online consumer discrimination based on nationality or location. Consequently, geo-blocking and geo-filtering can raise different obstacles across the European Markets and in the Digital Single Market. While it might be justified in certain instances, it is important to regulate such trading techniques at the EU level to curb prohibited trading practices. This is the main reason why the EU has taken measures to address geo-blocking and other forms of discrimination in the digital single market, with the aim of promoting a more open, competitive, and non-discriminatory market for consumers. The Geo-blocking Regulation, which has been applicable across the EU since 2018, will be discussed more briefly in Chapter 2.4.2.

2. ANALYSIS OF THE EU NON-DISCRIMINATION FRAMEWORK

A handbook on European non-discrimination law provides a very clear definition: „*The aim of non-discrimination law is to allow all individuals an equal and fair prospect to access opportunities available in a society*“⁶⁷. The EU's anti-discrimination framework seeks to ensure equal treatment and opportunities for all individuals, regardless of personal characteristics, as the principle of non-discrimination underpins the enjoyment of all human rights⁶⁸. This means that individuals or groups of individuals which are in comparable situations should always be treated the same and should never be treated less favourably simply because of certain characteristics, such as gender, age, race, ethnicity, religion or sexual orientation⁶⁹. Both consumers and businesses, particularly small and medium-sized businesses, are increasingly inclined towards cross-border shopping within the EU, with 68% of EU internet users engaging in online shopping in 2017⁷⁰.

Over the past few years, European institutions have focused their efforts on combating discrimination against customers based on nationality or place of residence⁷¹. Although the EU has adopted many laws and regulations to decrease unlawful consumer discrimination and geo-blocking, it remains a problem in the digital single market. EU businesses claim that they do not discriminate consumers on purpose, whereas they mainly rely on Competition Law and thus often fail to understand other regulations well enough⁷². However, traders still often refuse to sell

⁶⁷ Liddell, R., O’Flaherty, M. (2018). Handbook on European non-discrimination law. European Union Agency for Fundamental Rights.

⁶⁸ *Ibid.*

⁶⁹ European Union. (n.d.). Non-discrimination - the principle of. EUR-Lex. <https://eur-lex.europa.eu/EN/legal-content/glossary/non-discrimination-the-principle-of.html>

⁷⁰ European Commission. Questions and answers relating to the Regulation 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 (“Geo-blocking Regulation”)

⁷¹ Schulte-Nölke, H., Zoll, F., Macierzyńska-Franaszczyk, E., Sebastian, S., Charlton, S., Barmscheid, M., & Kubela, M. (2013). Discrimination of 16 Consumers in the Digital Single Market. Studies requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO).

⁷² *Ibid.*

or supply goods to customers from another Member State or provide prices that are equally favorable when compared to local clients, without any objective justification⁷³.

The lack of awareness and a clear definition of what constitutes unlawful discrimination makes it difficult for businesses to comply with the regulations, and some businesses may unintentionally violate them. Although the EU has implemented various frameworks and made efforts to tackle discrimination in e-commerce, consumers remain to face distinct challenges regarding discriminatory practises.

2.1. Competition Law

While discussing geo-discriminatory trading practices, European Competition Law is often the first legal framework that is thought of. It is based on the Treaty on the Function of the European Union (TFEU). Article 18 of the TFEU prohibits any discrimination on grounds of nationality⁷⁴. This provision ensures equal treatment for EU citizens in Member State within the scope of the Treaties, preventing discrimination in uncovered areas of EU law. To activate, two conditions must be met: the situation falls under Treaty application, and there's no more specific EU law provision addressing the discrimination. Once met, the principle of non-discrimination on nationality grounds applies, eliminating all discrimination arising from national legislation or practices⁷⁵.

However, the trader may have an objective reason or may be able to prove that the price differentiation is not based solely on the consumer's nationality. In the case of price discrimination, only two articles, namely Article 101(a) and Article 102 of the TFEU, can be identified as potentially applicable. However, Article 101(a) prohibits “*all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions.*”⁷⁶ Therefore,

⁷³ Roy, A., & Marsoof, A. (2017). Geo-Blocking, VPNs and Injunctions”. European Intellectual Property Review, 39(11), 672-680

⁷⁴ Article 18 of the TFEU (Consolidated version of the Treaty on the Functioning of the European Union)

⁷⁵ Rossi, L. S. (2020). Framing the Principle of NonDiscrimination on Grounds of Nationality. Article 18 (1) TFEU in the ECJ case law. *Il Diritto Dell'unione Europea*, (2).

⁷⁶ Article 101(a) of the TFEU (Consolidated version of the Treaty on the Functioning of the European Union)

Article 101(a) is applicable to agreements between businesses, which are unlikely to have any desirable effect in the case of online price discrimination⁷⁷, and more precisely, price discrimination targeted at consumers.

Article 102 of the TFEU, on the other hand, prohibits “*any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States*”⁷⁸. However, it should be noted that a dominant position is rarely found⁷⁹, as the company needs to have “*substantial market power*”⁸⁰.

According to Article 102(a) of the TFEU, unfair pricing practice can be found when a dominant company is “*directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions*.”⁸¹ Discriminatory pricing can be found under Article 102(c) of the TFEU when a dominant company is “*applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage*”⁸². The applicability of Article 102(c) requires meeting certain factors⁸³. Online price discrimination can, however, be challenging to identify, and it may not be possible to identify why different offers were made to users. Consequently, there are significant obstacles to overcome for successfully claim online price discrimination claim EU competition law. The largest issue is likely to be the requirement that the company occupies a “*dominant position*” in the market⁸⁵. Furthermore, there is significant uncertainty in the legal precedents regarding issues directly related to the examination of online price discrimination under competition law⁸⁶.

Ultimately, it may be difficult for a consumer to utilise competition law when dealing with price discriminatory practices, more precisely referring to TFEU Articles 101 or 102, as it requires that

⁷⁷ Townley, C., Morrison, E., & Yeung, K. (2017). Big data and personalized price discrimination in EU competition law. *Yearbook of European Law*, 36, 683-748.

⁷⁸ Article 102 of the TFEU (Consolidated version of the Treaty on the Functioning of the European Union)

⁷⁹ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

⁸⁰ Townley, C., Morrison, E., & Yeung, K. (2017). Big data and personalized price discrimination in EU competition law. *Yearbook of European Law*, 36, 683-748.

⁸¹ Article 102(a) of TFEU (Consolidated version of the Treaty on the Functioning of the European Union)

⁸² Article 102(c) of the TFEU (Consolidated version of the Treaty on the Functioning of the European Union)

⁸³ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

⁸⁴ See: European Court of Justice. (2018). Case C-525/16: *MEO – Serviços de Comunicações e Multimédia SA v Autoridade da Concorrência*. Retrieved from: <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-525/16> , "competitive disadvantage" falls under Article 102(c).

⁸⁵ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

⁸⁶ Townley, C., Morrison, E., & Yeung, K. (2017). Big data and personalized price discrimination in EU competition law. *Yearbook of European Law*, 36, 683-748.

specific factors must be met. Therefore, while analysing the Finnish dining brand X case, TFEU, the most relevant Article 102 may not still be the best fit, as the question of whether brand X has market power and could be considered a dominant firm under TFEU can be highly disputable. In another situation, if the requirements of TFEU Articles 101 or 102 are met, it is possible to use these provisions, referring to them as infringement of price discrimination. However, as discriminatory conditions, more precisely conditions for discrimination on grounds of nationality, are met, it may be possible to refer to Article 18 of the TFEU.

2.2. Consumer Protection Law

Consumer protection law may also have a significant impact on online price discrimination. Online price discrimination cases may be handled more appropriately by consumer protection law than previously analysed Competition Law, since it applies to business-to-consumer transactions more precisely and does not have to overcome certain hurdles, including a finding of market power in abuse of dominance cases⁸⁷.

Consumer protection has been a goal of a number of EU directives over the years. There are several different directives that may apply to alleged infringements involving online price discrimination, including the Consumer Rights Directive (Directive 2011/83/EU), the Unfair Commercial Practices Directive (Directive 2005/29/EC), and the Unfair Contract Terms Directive (Directive 93/13/EEC)⁸⁸.

The Consumer Rights Directive (Directive 2011/83/EU) applies in all Member States from 2014 with the purpose of achieving a high level of consumer protection concerning contracts concluded between consumers and traders⁸⁹ by giving the consumers the same rights across the EU⁹⁰. This Directive applies to any contract concluded between a trader and a consumer⁹¹ and establishes rules on information to be provided for contract⁹². It consolidates and harmonises national consumer regulations, ensuring that consumers can consistently rely on the same rights,

⁸⁷ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

⁸⁸ *Ibid.*

⁸⁹ Article 1 of the Consumer Rights Directive (DIRECTIVE 2011/83/EU)

⁹⁰ European Commission. (2015). Key Facts on the new EU Consumer Rights Directive. Retrieved from: https://commission.europa.eu/system/files/2017-08/crd_arc_factsheet-consumer_en.pdf

⁹¹ Article 3 of the Consumer Rights Directive (DIRECTIVE 2011/83/EU)

⁹² Recital 9 of the Consumer Rights Directive (DIRECTIVE 2011/83/EU)

regardless of where they make their purchases⁹³. The most important provision, relevant to price discrimination, is laid down in Article 6, which specifies information requirements for distance and off-premises contracts. It requires that the consumer is notified when pricing is personalised through automated decision-making processes^{94,95}. The EU amended Directive Directive 2011/83/EU with Directive 2019/2161/EU and under the new Directive, traders are allowed to personalise the price of their offers for specific consumers or specific categories of consumer based on automated decision-making and profiling of consumer behaviour⁹⁶. However, it must remain in accordance with the General Data Protection Regulation, which provides the right not to be subject to a decision based solely on automated processing, including profiling⁹⁷.

Therefore, consumers should be clearly informed each time when the price is personalised by automated decision-making, to ensure they are aware of the potential risks regarding their purchasing decision⁹⁸. Although the Consumer Rights Directive does not directly address geo-discrimination practices, it requires businesses to offer transparent information on how prices are determined. Personalised pricing is permitted as long as the trader "*duly informs consumers about the prices or how they are calculated*"⁹⁹. Thus, in accordance with the Consumer Rights Directive, Finnish brand X is required to provide clear information to consumers regarding the use of personalised pricing. Regardless of the fact that the Directive is not able to prohibit geo-discrimination, it helps to mitigate the lack of clarity on personalised pricing.

Another important Directive worth noting is the Unfair Commercial Practices Directive (Directive 2005/29/EC), which came into force in 2005 with the aim of protecting consumers from unfair commercial practices¹⁰⁰. The Directive directly protects consumers' economic interests from unfair business-to-consumer commercial practices¹⁰¹ and defines these prohibited acts in the European Union. According to Article 5(2) a commercial practice is unfair if "(a) it is

⁹³ European Commission. (2015). Key Facts on the new EU Consumer Rights Directive. Retrieved from: https://commission.europa.eu/system/files/2017-08/crd_arc_factsheet-consumer_en.pdf

⁹⁴ Henriques, A. A. (2022). The (unclear) relationship between a personalised price term and the unfair contractual terms directive (Doctoral dissertation).

⁹⁵ Article 6 (1e) of the Consumer Rights Directive (DIRECTIVE 2011/83/EU)

⁹⁶ Recital (45) of the Directive 2019/2161/EU

⁹⁷ Recital (45) and Article 22 (1) of the General Data Protection Regulation (REGULATION (EU) 2016/679)

⁹⁸ Recital (45) of the Consumer Rights Directive (DIRECTIVE 2011/83/EU)

⁹⁹ van der Rest, J. P. I., Sears, A. M., Miao, L., & Wang, L. (2020). A note on the future of personalized pricing: Cause for concern. *Journal of Revenue and Pricing Management*, 19, 113-118.

¹⁰⁰ Article 3 of the Unfair Commercial Practices Directive (DIRECTIVE 2005/29/EC)

¹⁰¹ Recital (8) of the Unfair Commercial Practices Directive (DIRECTIVE 2005/29/EC)

*contrary to the requirements of professional diligence, and (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.*¹⁰² Although at first, it might seem relevant in the case of geo-discrimination, limitations can be found. Annex I contains a list of these misleading and aggressive commercial practices that are prohibited in all circumstances. However, the “*black-list*” does not include directly the prohibition of price discrimination based on consumers’ place of residence and does not prohibit practices through personalised pricing. As a consequence of the lack of enforcement and awareness among both traders and consumers¹⁰³, the Directive 2019/2161/EU introduces new rules on penalties to ensure that effective, proportionate and dissuasive fines can be imposed on traders responsible for infringements¹⁰⁴ and ensuring remedies for consumers harmed by unfair commercial practices in order to eliminate all the effects of those unfair practices¹⁰⁵. However, since this Directive specifically addresses misleading and aggressive commercial practices¹⁰⁶ from traders to consumers, it is unlikely to inherently violate the Directive. Therefore, in the case of Finnish brand X, this directive falls out of scope, as they are not engaging in misleading marketing or aggressive commercial practices.

The Unfair Contract Terms Directive (Directive 93/13/EEC) came into force in 1993 with the aim of addressing unfair contracts between consumers and businesses¹⁰⁷. According to the Article 3, “*a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer*”¹⁰⁸. This provision offers consumers protection against pre-drafted contractual terms in standard contracts for goods and services, preventing the inclusion of unfair terms and conditions. The concept relies on the principle of “*good faith*” to prevent any substantial imbalance in mutual rights and obligations¹⁰⁹.

¹⁰² Article 5(2) of the Unfair Commercial Practices Directive (DIRECTIVE 2005/29/EC)

¹⁰³ Recital (2) of the Unfair Commercial Practices Directive (DIRECTIVE 2005/29/EC)

¹⁰⁴ Recital (5) of the Unfair Commercial Practices Directive (DIRECTIVE 2005/29/EC)

¹⁰⁵ Recital (16) of the Unfair Commercial Practices Directive (DIRECTIVE 2005/29/EC)

¹⁰⁶ Recital (14) of the Unfair Commercial Practices Directive (DIRECTIVE 2005/29/EC)

¹⁰⁷ Article 1(1) of the Unfair Contract Terms Directive (DIRECTIVE 93/13/EEC)

¹⁰⁸ Article 3 of the Unfair Contract Terms Directive (DIRECTIVE 93/13/EEC)

¹⁰⁹ European Union. (n.d.). Protecting consumers from unfair terms in contracts. EUR-Lex. <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:31993L0013>

Therefore, in the case of personalised pricing practices conducted without the consumer's knowledge, assuming that the consumer is unaware of how prices are calculated and consequently lacking transparency, such practices could fall under this Article¹¹⁰. Under the amended Directive (EU) 2019/2161, which modifies Directive 93/13/EEC, Member States must have the authority to impose fines when identifying significant cross-border infringements affecting consumers in multiple Member States. Fines may amount to at least 4% of a trader's annual turnover or €2 million if information about the trader's turnover is unavailable¹¹¹.

2.3. General Data Protection Regulation

Another legislation under which geo-discrimination may be challenged is Data Protection Law. General Data Protection Regulation (Regulation (EU) 2016/679), has applied since 2018 and protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data¹¹².

In EU law, the right to data protection is not only acknowledged as a fundamental right under Article 8 of the Charter of Fundamental Rights of the European Union, but is also enshrined in Article 16 of the Treaty on the Functioning of the European Union (TFEU), which was incorporated into the Lisbon Treaty, serving as the new legal foundation for the adoption of secondary legislation pertaining to data protection¹¹³. In order to protect the fundamental right to data protection in the EU, data protection law gives data subjects control over their personal data and restricts how their data is collected and used¹¹⁴. Traders usually collect personal data from individuals to personalise prices and engage in price discrimination¹¹⁵. The General Data Protection Regulation (GDPR) relies heavily on transparency to determine where users' information will be shared, what data will be collected, and how it will be used¹¹⁶. In the GDPR, controllers and processors are required to comply with a number of obligations¹¹⁷. Under the

¹¹⁰ Henriques, A. A. (2022). The (unclear) relationship between a personalised price term and the unfair contractual terms directive (Doctoral dissertation).

¹¹¹ European Union. (n.d.). Protecting consumers from unfair terms in contracts. EUR-Lex. <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:31993L0013>

¹¹² Article 1 (2) of the General Data Protection Regulation (REGULATION (EU) 2016/679)

¹¹³ Graef, I. (2017). Algorithms and fairness: What role for competition law in targeting price discrimination towards ends consumers. *Colum. J. Eur. L.*, 24, 541.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ Spindler, G., & Schmechel, P. (2016). Personal data and encryption in the European general data protection regulation. *J. Intell. Prop. Info. Tech. & Elec. Com. L.*, 7, 163.

¹¹⁷ Graef, I. (2017). Algorithms and fairness: What role for competition law in targeting price discrimination towards ends consumers. *Colum. J. Eur. L.*, 24, 541.

Regulation “*controller*” is defined as natural or legal person, public authority, agency or other body which, determines the purposes and means of such processing of personal data¹¹⁸ and the “*processor*” defined as a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller¹¹⁹.

Whereas the Regulation (EU) 2018/302 on “*geo-blocking*” has been proposed to eliminate online discrimination on the basis of nationality and residence, the GDPR likewise contains provisions relevant to discriminatory pricing in the digital age¹²⁰. In addition, the General Data Protection Regulation can affect price discrimination based on the processing of personal data online. When it comes to online price discrimination, it is very important to know the purpose of the data controller’s legitimate interests. Since online price discrimination usually entails the processing of personal data¹²¹, GDPR applies; thus it must be processed “*lawfully, fairly and in a transparent*” manner¹²². The GDPR covers all personal data processed wholly or partly by automatic means¹²³. “*Personal data*” is defined as any information relating to an identified or identifiable natural person, such as a name, an identification number, location data, an online identifier or factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. In addition, courts have given a broad interpretation to what constitutes personal information. The CJEU stated in *Scarlet Extended v. Société Belge des Auteurs, Compositeurs et Éditeurs SCRL*¹²⁴ that “*IP addresses*” constitute personal data, and in *Patrick Breyer v. Bundesrepublik Deutschland*¹²⁵ that even „*dynamic or static IP addresses*“ may constitute personal data¹²⁶. These elements are usually used in order to practice discriminatory pricing.

The GDPR is not transposed into national law, but forms a part of it automatically. By applying this, Member States will be able to reduce conceptual differences among themselves and ultimately eliminate differences of opinion surrounding the minimum or maximum

¹¹⁸ Article 4(7) of the General Data Protection Regulation (Regulation (EU) 2016/679)

¹¹⁹ Article 4(8) of the General Data Protection Regulation (Regulation (EU) 2016/679)

¹²⁰ Steppe, R. (2017). Online price discrimination and personal data: A General Data Protection Regulation perspective. *Computer law & security review*, 33(6), 768- 785.

¹²¹ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1

¹²² Article 5(1)(a) of the General Data Protection Regulation (EU) 2016/679

¹²³ Steppe, R. (2017). Online price discrimination and personal data: A General Data Protection Regulation perspective. *Computer law & security review*, 33(6), 768- 785.

¹²⁴ Case C-70/10, *Scarlet Extended SA v. Société Belge des Auteurs, Compositeurs et Éditeurs SCRL (SABAM)*, 2011 E.C.R. I-11959

¹²⁵ Case C-582/14, *Breyer v. Bundesrepublik Deutschland*, 2016 E.C.R. 779

¹²⁶ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1

harmonisation character¹²⁷. Businesses operating in the European Union must comply with GDPR to avoid fines, failure to comply with the Data Protections can have serious consequences. A violation of the Data Protection Law can result in harsh penalties, including prosecution and repercussions for the businesses¹²⁸. The fine depends on which provision was violated and can amount to up to either €20 million or 4% of the worldwide revenue of the preceding financial year, whichever is higher.¹²⁹.

It is also important to mention ePrivacy Directive¹³⁰, known as Directive 2002/58/EC which was adopted on July 12, 2002 by the European Union and later amended by Directive 2009/136/EC. In addition to the GDPR, this Directive regulates the processing of personal data, the protection of privacy within the European Union, including the use of cookies in the personalisation process. A sufficient level of transparency is achieved when the ePrivacy Directive and GDPR are combined¹³¹. Despite not addressing discrimination specifically, the ePrivacy Directive contains provisions related to processing personal data, consent requirements, and cookies. Protecting individuals' privacy in electronic communications is the primary purpose of these provisions. Therefore, to comply with the GDPR, customers must be informed when personal data is obtained and provided with all relevant information in this regard¹³². In addition, the ePrivacy Directive requires information about tracking cookies, and which consent is required. Online price discrimination often relies on automated decision-making, which would require additional information under the GDPR¹³³.

The importance of data privacy will only grow. Despite recent regulations and attempts to reduce the amount of data organisations can collect, it remains the most valuable asset. We live in very interesting times, we will see how General Data Protection Regulation and other rules concerning the protection of personal data are going to evolve even more in the near future. Geo-discrimination practices that involve unequal treatment based on geographical location may raise concerns under the General Data Protection Regulation. The GDPR emphasises the

¹²⁷ Steppe, R. (2017). Online price discrimination and personal data: A General Data Protection Regulation perspective. *Computer law & security review*, 33(6), 768- 785.

¹²⁸ *Ibid.*

¹²⁹ Article 83(4)-(5) of the General Data Protection Regulation (Regulation (EU) 2016/679)

¹³⁰ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)

¹³¹ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1

¹³² Article 13 of the General Data Protection Regulation (Regulation (EU) 2016/679)

¹³³ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1

principles of fairness and transparency in data processing¹³⁴. While analysing the Finnish dining brand X- since the website collects and processes personal data to determine the location of consumers for discriminatory pricing without proper disclosure, transparency, or possibly lawful basis, it possibly violates the GDPR principles. It is important that websites clearly disclose their data processing practices, including any location-based pricing mechanisms, and obtain explicit consent from users if necessary to comply with the law.

2.4. Non-Discrimination Provisions

Throughout the development of EU anti-discrimination law, several secondary legal measures have been introduced with varying scopes and applications¹³⁵. The EU has tried to tackle discrimination directly by issuing various non-discrimination provisions, such as Racial Equality Directive (Directive 2000/43/EC)¹³⁶, Employment Equality Directive (Directive 2000/78/EC)¹³⁷, Gender Equality Directive (Directive 2006/54/EC)¹³⁸, and Gender Goods and Services Directive (Directive 2004/113/EC)¹³⁹¹⁴⁰. However, under these non-discrimination directives, the protected categories are explicitly defined and prohibited, and therefore, do not directly apply to online geo-discrimination issues. Legal action can only be taken under these directives when a discrimination case involves one of the explicitly defined protected categories. However, in the case of price discrimination practices, proving their violation could be very challenging.

Nevertheless, there are two principal secondary legislations that prohibit direct discrimination based on nationality or place of residence, which are the Services in the Internal Market

¹³⁴ Article 5(a) of the General Data Protection Regulation (Regulation (EU) 2016/679)

¹³⁵ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1

¹³⁶ Which prohibits “*discrimination on the grounds of racial or ethnic origin*” according to Article 1 of the Racial Equality Directive (Directive 2000/43/EC)

¹³⁷ Which prohibits “*discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation*” according to Article 1 of the Employment Equality Directive (Directive 2000/78/EC)

¹³⁸ Which ensures “*the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation*” according to Article 1 of the Gender Equality Directive (Directive 2006/54/EC)

¹³⁹ Which prohibits “*discrimination based on sex in access to and supply of goods and services*” according to Article 1 of the Gender Goods and Services Directive (Directive 2004/113/EC)

¹⁴⁰ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1

Directive (Directive 2006/123/EC)¹⁴¹ and the Geo-Blocking Regulation (Regulation (EU) 2018/302)¹⁴².

2.4.1. Services in the Internal Market Directive

The Services Directive (Directive 2006/123/EC) was adopted in 2006, with the goal of promoting the freedom of establishment for service providers and the free movement of services between the Member States¹⁴³. The Directive aims to remove barriers to trade in services in the EU by simplifying administrative procedures for service providers, enhancing the rights of consumers and businesses receiving services and fostering cooperation among EU countries¹⁴⁴.

In the Services Directive, Article 20 prohibits directly discriminatory requirements based on the recipient's nationality or place of residence¹⁴⁵. Additionally, it mandates Member States to guarantee that the general conditions of access to a service, publicly offered by the provider, are free from discriminatory provisions related to the nationality or place of residence of the recipient. However, this does not preclude the possibility of allowing differences in access conditions if directly justified by objective criteria¹⁴⁶. The Directive presents several limitations, making it challenging to precisely determine what is included and what is excluded, necessitating clarification through litigation by the court¹⁴⁷. However, CJEU, in joined cases *College van Burgemeester en Wethouders van de gemeente Amersfoort v. X BV* and *Visser Vastgoed Beleggingen BV v. Raad van de gemeente Appingedam*¹⁴⁸ stated that “the activity of retail trade in goods” constitutes a “service”. Therefore, this also applies to the distribution of goods (transport, wholesale, retail, after-sale services) as well as to the performance of a service activity, whether the good is used as an equipment component or integral part of the service (for example, construction products used by builders)¹⁴⁹.

¹⁴¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market

¹⁴² 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

¹⁴³ Article 1 of the Services Directive (Directive 2006/123/EC)

¹⁴⁴ European Union. (n.d.). The EU's services directive. EUR-Lex. <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32006L0123>

¹⁴⁵ Article 20(1) of the Services Directive (Directive 2006/123/EC)

¹⁴⁶ Article 20(2) of the Services Directive (Directive 2006/123/EC)

¹⁴⁷ Snell, J. (2008). Freedom to provide services in the case law and in the services directive: problems, solutions, and institutions. *The Services Directive: Consequences for the Welfare State and the European Social Model*, 171-98.

¹⁴⁸ C-360/15 and C-31/16, *College van Burgemeester en Wethouders van de gemeente Amersfoort v. X BV and Visser Vastgoed Beleggingen BV v. Raad van de gemeente Appingedam*, 2018 ECLI:EU:C:2018:44

¹⁴⁹ European Commission. (2007). Handbook on implementation of the Services Directive.

Nevertheless, customers continue to encounter refusals to sell and different conditions when buying goods and services across borders, despite the implementation of the Service Directive¹⁵⁰. This is mainly due to uncertainty over what constitutes objective criteria that justify differences in traders' treatment of customers¹⁵¹. Consequently, in practice, this provision has proven ineffective due to significant interpretative ambiguities and lack of enforcement¹⁵². For the purpose of resolving this issue, traders and customers should be made more aware of situations in which a distinction in treatment based on residence is unjustifiable. This clarity should include clear rules and regulations that prohibit traders from treating customers differently based solely on their residence. These rules should be enforced by regulators to ensure that customers are treated fairly and equitably¹⁵³. Stronger enforcement of the Directive and its expansion to the sale of goods could possibly prevent geographic online price discrimination.

2.4.2. Geo-blocking Regulation

The Geo-blocking Regulation (EU Regulation 2018/302) applied since 2018 across the European Union addressing discriminatory treatment of customers. Regulation aims to ensure the proper functioning of the EU's internal market by preventing unjustified geo-blocking¹⁵⁴ and other forms of discrimination based, directly or indirectly, on customers' nationality, place of residence or location, in online and offline transactions within the EU¹⁵⁵. It prohibits discrimination between EU customers in access to goods and services on the basis of the customer's nationality, residence or establishment, when the foreign customer accepts the conditions applied domestically (the right to "shop like a local")¹⁵⁶. The regulation also ensures that customers' access to goods and services is not hindered based on their nationality, residence, or place of establishment in payment transactions¹⁵⁷.

¹⁵⁰ European Commission, "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/2016/0289 final - 2016/0152 (COD)

¹⁵¹ *Ibid.*

¹⁵² Flórez Rojas, M. L. (2018). Are online consumers protected from geo-blocking practices within the European Union?. *International Journal of Law and Information Technology*, 26(2), 119-141.

¹⁵³ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

¹⁵⁴ Pillar (3) of the Geo-blocking Regulation (EU Regulation 2018/302)

¹⁵⁵ European Union. (n.d.). Geo-blocking: addressing discriminatory treatment of customers. EUR-Lex. <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32018R0302>

¹⁵⁶ *Ibid.*

¹⁵⁷ Article 5 of the Geo-blocking Regulation (EU Regulation 2018/302)

The Geo-blocking Regulation aims to enhance the seamless performance of the internal market by prohibiting any unjustified geo-blocking or other form of discrimination, whether direct or indirect, against customers based on their nationality, place of residence, or place of establishment¹⁵⁸. It was also designed to elucidate "*specific situations where disparate treatment cannot be justified under Article 20(2)*" of the Services in the Internal Market Directive. This provision "*has not proven entirely effective in addressing discrimination, and it has not adequately diminished legal uncertainty.*¹⁵⁹¹⁶⁰" The Regulation defines geo-blocking as the restriction or limitation of access to an online interface by traders in other Member States. Additionally, it occurs when traders stipulate different conditions for customers from other Member States to access their goods and services¹⁶¹.

Geo-blocking, by nature, contradicts the goal of establishing a fully functioning Digital Single Market and may thus violate Article 18 of the TFEU¹⁶², which prohibits discrimination based on nationality. However, in the current EU framework, certain types of geo-blocking may be justified on legal grounds¹⁶³. The Regulation does not prohibit applying different general conditions of access for the provision of (non-audiovisual) copyright-protected content services, such as software, e-books, video games, and online music, based on the consumer's location¹⁶⁴.

Unjustified geo-blocking practices are purely commercial and targets price discrimination strategies or competition¹⁶⁵, customers are discriminated to increase profits at the expense of foreign customers¹⁶⁶. Traders can engage in such practices through unilateral decisions or contractual obligations (vertical agreements between suppliers and distributors) forbidding cross-border sales¹⁶⁷¹⁶⁸.

¹⁵⁸ Article 1(1) of the Geo-blocking Regulation (EU Regulation 2018/302)

¹⁵⁹ Article 20(2) of the Services in the Internal Market Directive (Directive 2006/123/EC)

¹⁶⁰ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

¹⁶¹ *Ibid.*

¹⁶² Article 18 of the TFEU

¹⁶³ Simonelli, F. (2016). *Combatting Consumer Discrimination in the Digital Single Market: Preventing Geo-Blocking and other Forms of Geo-Discrimination.*

¹⁶⁴ Ecommerce Europe. (2018). Q&A - Regulation on addressing unjustified geo-blocking. <https://www.ecommerce-europe.eu/wp-content/uploads/2019/03/Geo-blocking-QA.pdf>

¹⁶⁵ Simonelli, F. (2016). *Combatting Consumer Discrimination in the Digital Single Market: Preventing Geo-Blocking and other Forms of Geo-Discrimination.*

¹⁶⁶ Mazziotti, G. (2015). *Is geo-blocking a real cause for concern in Europe?*. EUI Department of Law Research Paper, (2015/43)."

¹⁶⁷ Simonelli, F. (2016). *Combatting Consumer Discrimination in the Digital Single Market: Preventing Geo-Blocking and other Forms of Geo-Discrimination.*

¹⁶⁸ For example, in 2020, the European Commission fined the Spanish hotel group Meliá for creating price discriminations for consumers of different EU Member States and issued a fine of €6.678m.

The Geo-blocking Regulation seeks to create increased opportunities for both consumers and businesses within the internal market of the European Union.¹⁶⁹ Specifically, the regulation tackles the issue of (potential) customers facing obstacles in purchasing goods and services from traders in another Member State due to factors like their nationality, place of residence, or place of establishment. This discrimination occurs when they attempt to access superior offers, prices, or sales conditions compared to nationals or residents of the trader's Member State¹⁷⁰.

The geo-blocking regulation defines three specific situations of unjustified geo-blocking¹⁷¹:

1. the sale of good without physical delivery;
2. the sale of electronically supplied services; and
3. the sale of services provided in a specific physical location.

For instance, the sale of goods without physical delivery occurs when a customer seeks to make a purchase and discovers a favourable deal abroad. The customer has the right to place an order for the product and either retrieve it at the trader's location or arrange for the delivery independently¹⁷². An instance of the sale of electronically supplied services occurs when a customer intends to purchase hosting services for her website from a foreign company. The customer can access the service, register, and make the purchase without incurring additional fees compared to the citizens of the country where the company is located.¹⁷³ Finally, the example of the sale of services offered at a particular physical location, such as when a customer visits an overseas theme park and seeks to benefit from a family discount on the entry ticket prices.¹⁷⁴ However, the Regulation does not mandate a complete harmonisation of prices¹⁷⁵. Varied prices, offers, and conditions may be presented to customers in specific situations, provided they are not discriminatory, as long as they do not discriminate. For example, the prices charged in physical stores and on the website may differ. As the Regulation has only been in

¹⁶⁹ Roy, A., & Marsoof, A. (2017). Geo-Blocking, VPNs and Injunctions". *European Intellectual Property Review*, 39(11), 672-680.

¹⁷⁰ European Commission. Questions and answers relating to the Regulation 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 ("Geo-blocking Regulation")

¹⁷¹ 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

¹⁷² European Commission. Questions and answers relating to the Regulation 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 ("Geo-blocking Regulation")

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

effect for a short time, it is unclear to what extent it resolves the legal uncertainties in the Services Directive¹⁷⁶.

¹⁷⁶ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

3. CONSUMERS' LEGAL OPTIONS

Access to justice is a fundamental human right, recognised in both the European Union¹⁷⁷ and the European Convention on Human Rights¹⁷⁸. This means that European consumers have the right to access courts and legal procedures to protect their rights and interests. The right to access justice is also recognised as an essential element of the Rule of Law¹⁷⁹, as it ensures that everyone is treated fairly and equally under the law¹⁸⁰. The right to „*access to justice*“ is important because it ensures that consumers can enforce their rights and seek remedies for harm caused by a trader whose practices are unfair or discriminatory. Before taking any legal action, a consumer who feels they have been treated unfairly should contact the party involved in the situation. The consumer can either contact the party directly to explain their concerns or seek assistance from a consumer protection agency or legal professional. This will enable them to receive guidance on negotiating a resolution.

Resolving a complaint should always begin with the negotiation phase and trying to reach an agreement with the seller. The other party should have the opportunity to rectify their actions, as discrimination or unfair trading practices may not always be committed intentionally. Based on the outcome, the consumer can determine if they are satisfied with the reasoning and possible resolution or if further action is necessary. However, taking action as a consumer can be challenging when geo-discrimination practices are applied across borders. While every litigation can be a stressful, expensive, and time-consuming process, it should be noted that pursuing legal action against a trader located outside the European Union may not be viable. This is due to the fact that initiating legal proceedings against a trader outside the EU can be a protracted and costly procedure, and also, the outcome is not always guaranteed. It should also be noted that consumers from non-EU countries are generally not protected against unfavourable treatment

¹⁷⁷ Article 47 of the Charter of Fundamental Rights of the European Union

¹⁷⁸ Article 6(1) of the European Convention on Human Rights (ECHR)

¹⁷⁹ O'donnell, G. (2004). The quality of democracy: Why the rule of law matters. *Journal of democracy*, 15(4), 32-46.

¹⁸⁰ Article 20 of the Charter of Fundamental Rights of the European Union

based on nationality under the European non-discrimination framework¹⁸¹. The non-discrimination provisions only apply to individuals within the European Union and do not extend to non-EU countries.

Fortunately, the European consumer has several options to take legal action against a trader established inside the EU to resolve the dispute out of court or in court. Considering that this paper explores geo-discrimination between businesses and consumers, the following discussion will examine legal options for consumers against traders based in the EU. To resolve issues with geo-discriminatory pricing schemes, claimants can take some simple steps to facilitate the resolution process, especially if third parties are involved. The main step would be to identify whether the trading practice is in fact discriminatory¹⁸². As previously discussed in Chapter 1.1, the difference in price is not always prohibited. It is legal for businesses to use different promotional tools, to offer different price discounts, and to reward their loyal customers¹⁸³.

However, if the price had been different if the consumer had been of a different nationality, location, sex, age, or any other protected characteristic, then it would be evident that the less favourable treatment caused the situation, which is prohibited¹⁸⁴. If this is the case, the person that has been discriminated against must gather evidence to support the claim against the trader, which proves that the trading practice is harmful. Taking pictures or recording can be one way to accomplish this. It is important to be able to prove that an individual which can be identified as a „comparator“ is not in a similar or comparable situation¹⁸⁵. Traders must either demonstrate that the prohibited ground does not cause the differential treatment, or show that the differential treatment is related to the prohibited ground, but has an objective and reasonable justification¹⁸⁶. While still discussing Finnish brand X, the company should also be able to provide a rationale and objective justification for its price differentiation practices. Consumers have multiple legal options available to them if they feel a trader has violated their rights and the desired result is not achieved through negotiation. These include alternative dispute resolution and its mechanisms,

¹⁸¹ Hamul'ák, O., Kiss, L. N., Gábriš, T., & Kocharyan, H. (2021). “This Content is not Available in your Country” A General Summary on Geo-Blocking in and Outside the European Union. *International and Comparative Law Review*, 21(1), 153-183.

¹⁸² Pike, C. (2016). Price discrimination.

¹⁸³ Ndubisi, N. O. (2005). Gender differences in customer behavioural responses to sales promotion. *Asia Pacific Management Review*, 10(3), 175-185.

¹⁸⁴ Liddell, R., O'Flaherty, M. (2018). Handbook on European non-discrimination law. European Union Agency for Fundamental Rights.

¹⁸⁵ Pike, C. (2016). Price discrimination.

¹⁸⁶ *Ibid.*

online dispute resolution, small claims procedures, consumer protection agencies, and regular court proceedings.

3.1. Consumer Protection in Estonia

Within the European Union, each Member State has a consumer protection agency that is responsible for enforcing consumer protection laws and regulations. In Estonia, various legal acts have been adopted to protect consumer rights, including the Unfair Commercial Practices Directive, Price Indication Directive, Timeshare Directive, Unfair Contract Terms Directive, Consumer Rights Directive, Consumer Sales and Guarantees Directive and Misleading and Comparative Advertising Directive, which are all implemented mainly by the Consumer Protection Act, the Advertising Act and the Law of Obligations Act¹⁸⁷. Estonia has two separate entities that deal with consumer protection issues: the Consumer Protection and Technical Regulatory Authority and the Consumer Disputes Committee. The Consumer Protection and Technical Regulatory Authority is a government authority within the area of government of the Ministry of Economic Affairs and Communications¹⁸⁸.

The Consumer Disputes Committee is according to Article 22 of Consumer Protection Act (CPA) *an independent institution*¹⁸⁹, *which is competent to settle disputes arising from contracts between consumers and traders if the parties have not been able to settle the disputes by agreement*¹⁹⁰. However, the primary duty is to protect the rights and interests of consumers and is also responsible for ensuring that businesses comply with consumer protection laws and regulations, as well as providing information and support to consumers who have complaints or concerns about products or services¹⁹¹. The Consumer Disputes Committee plays a central role in resolving the majority of out-of-court consumer disputes in Estonia¹⁹². This is likely due to the Committee's efficiency and convenience in contrast to court proceedings, demanding less time and money. Resolving a dispute in the Consumer Disputes Committee is cost-free for both the consumer and the trader, with decisions typically reached within 90 days of statement

¹⁸⁷ E-Justice Portal. "Enforcement - Estonia."

<https://e-justice.europa.eu/37165/EN/enforcement?ESTONIA&member=1>. Accessed: 16 December 2023.

¹⁸⁸ Article 21(1) of Consumer Protection Act

¹⁸⁹ Article 22(1) of Consumer Protection Act

¹⁹⁰ Article 22(2) of Consumer Protection Act

¹⁹¹ Article 17(2) of Consumer Protection Act

¹⁹² Malmel, H. (2021). Consumer dispute resolution in Estonia: a proposal for revision and modification of general dispute resolution mechanism.

processing¹⁹³. The dispute will end with the decisions, which will be published on the website of the Consumer Protection Board¹⁹⁴. This has the potential to contribute to the advancement of consumer rights, as it serves as a valuable resource for educating the public on their rights and promoting a fair and transparent consumer protection framework. Moreover, if a decision by the Committee is not adhered to, the Consumer Protection Board has the right to act as the representative of the consumer and initiate legal proceedings in a county court to have the same dispute heard, provided the dispute is relevant to the general interests of consumers¹⁹⁵. This could be the case of geo-discrimination. Alternatively, if a party disagrees with the committee's decision, they have the right to initiate legal proceedings in the county court for the same dispute¹⁹⁶.

Although the Committee stands for consumer rights, it has several limitations. Firstly, when submitting a complaint, there is a requirement for documentary evidence¹⁹⁷. Without it, there could be a termination of proceedings since it requires a thorough investigation¹⁹⁸. Due to this limitation, the committee is incapable of addressing preventive disputes, particularly those concerning online price discrimination or possibly geo-discrimination that has not transpired but has been identified by the consumer. Secondly, the Committee is not competent to resolve consumer disputes arising from a business-to-consumer contract between a consumer and a trader if the trader is not registered in Estonia¹⁹⁹. However, the percentage of Estonian e-shoppers grew from 29% in 2012 to 77% in 2022, reflecting an increase of 47%, indicating that consumers also may require a high level of protection beyond borders.

The right to the protection of the state and of the law has been recognised since the Constitution of the Republic of Estonia, in which Article 13 states: *“Everyone has the right to the protection of the state and of the law. The Estonian state shall also protect its citizens abroad.”*²⁰⁰ Nonetheless, when the trader is situated in another country, the complaint is not within the committee's competence and therefore is forwarded to the European Consumer Centre. Although, it should be the competence of the Estonian consumer protection authority to advocate

¹⁹³Consumer Protection and Technical Regulatory Authority. "About Consumer Disputes Committee." <https://ttja.ee/en/about-consumer-disputes-committee> Accessed: 18 October 2023.

¹⁹⁴ Article 36(2) of Consumer Protection Act

¹⁹⁵ Article 37(4) of Consumer Protection Act

¹⁹⁶ Article 37(3) of Consumer Protection Act

¹⁹⁷ Article 26(4) of Consumer Protection Act

¹⁹⁸ Article 29(1) of Consumer Protection Act

¹⁹⁹ Consumer Protection and Technical Regulatory Authority. "About Consumer Disputes Committee." <https://ttja.ee/en/about-consumer-disputes-committee> Accessed: 18 October 2023.

²⁰⁰ Article 13 of the Constitution of the Republic of Estonia

for its consumers' rights and represent consumers in cross-border proceedings if it is relevant to the general interests of consumers or if a discriminatory effect can be observed.

Fortunately, there is another possibility to seek ultimate consumer protection, which should be considered and mentioned: with the help of the Chancellor of Justice. Chancellor of Justice Act Article 1(5) defines the duties: “*the Chancellor of Justice resolves discrimination disputes which arise between persons in private law on the basis of the Constitution and other Acts*²⁰¹.” In the content of this thesis, Estonian consumer who feels that the trading practices of a private business is having discriminatory effect on specific protected grounds has the right to seek assistance²⁰². Ultimately, it may be the best option for an average consumer, as it is not mandatory to have all the evidence; if necessary, the Chancellor of Justice can collect evidence on his or her own initiative²⁰³. Moreover, the requirements for filing a complaint are minimal; the complainant has the right to submit a petition orally²⁰⁴. This provision already alleviates many problems that consumers may encounter and therefore, it could lead to greater consumer participation in deterring online consumer discrimination. The Chancellor of Justice serves as a mediator by making a proposal to resolve the dispute and enter into an agreement²⁰⁵, however, the position of the Chancellor is final and cannot be contested in court²⁰⁶. While it may appear that the Chancellor of Justice is the key to protecting the interests of consumers, there are some limitations. In order to enter into conciliation proceedings, the consent of both parties is required. If a person, for instance, the party that is engaging in discriminatory practices, refuses to participate, the Chancellor of Justice terminates the proceedings²⁰⁷. Fortunately, Estonians still have various opportunities to protect their rights across borders. These options include alternative dispute resolution, seeking assistance from ECC-Net, utilising the ODR platform, and taking legal action in court. All these possibilities will be discussed below.

²⁰¹ Chancellor of Justice Act Article 1(5)

²⁰² Chancellor of Justice Act Article 19(1) and Article 19(2)

²⁰³ Chancellor of Justice Act Article 21(1)

²⁰⁴ Chancellor of Justice Act Article 23(6)

²⁰⁵ Chancellor of Justice Act Article 35¹²(1)

²⁰⁶ Chancellor of Justice Act Article 35¹(3)

²⁰⁷ Estonian Chancellor of Justice. "Muud ülesanded." <https://www.oiguskantsler.ee/et/node/7057> Accessed: 3 September 2023.

3.2. Alternative Dispute Resolution

Alternative Dispute Resolution methods may be an option for EU consumers before resorting to legal action. These methods constitute a collection of procedures designed to facilitate the settlement of legal disputes outside of the courts. The European Parliament and the Council of the European Union adopted the ADR Directive²⁰⁸ (Directive 2013/11/EU) in 2013, which was then transposed into national law by each Member State by 2015. It was set up to help resolve consumer cross-border complaints more effectively, providing a high level consumer protection throughout the EU²⁰⁹. Although it may seem more secure option to take legal action when a dispute arises, a process that prioritises problem-solving may be more appropriate and practical than one focused on reaching a decision or judgement²¹⁰. Several types of alternative dispute resolution mechanisms can be used to resolve legal disputes. These mechanisms include arbitration, mediation, and other "hybrid" processes, such as online dispute resolution mechanisms, in which a neutral third party assists in the resolution of legal disputes instead of formal adjudication processes²¹¹.

These mechanisms have been developed to assist consumers and traders in resolving conflicts, if they were unable to resolve on their own²¹². The process offers several advantages over traditional court proceedings, such as accessibility, simplicity, speed, and cost-effectiveness²¹³, making it a more suitable option for both parties because it offers several benefits over traditional court proceedings. Many researchers have found that ADR solutions offer many benefits to involved parties that courts may not be able to offer and that may be the main reason why ADR solutions are getting more popular. The main benefit is having full control over the solution seeking process, which means that involved parties can arrange meetings according to

²⁰⁸ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

²⁰⁹ Knudsen, L. F., & Bălița, S. (2012). Development of Consumer Cross-border Alternative Dispute Resolution: ADR perspective. In Proceedings of Scientific Conference on Trends in Economics and Management for the 21st Century, Brno, Czech Republic, 20-22 September 2012

²¹⁰ Blake, S. H., Browne, J., & Sime, S. (2016). A practical approach to alternative dispute resolution. Oxford University Press

²¹¹ Mnookin, R.H. (2002). Alternative Dispute Resolution. In: Newman, P. (eds) The New Palgrave Dictionary of Economics and the Law. Palgrave Macmillan, London. 56-60 https://doi.org/10.1007/978-1-349-74173-1_14

²¹² Knudsen, L. F., & Bălița, S. (2012). Development of Consumer Cross-border Alternative Dispute Resolution: ADR perspective. In Proceedings of Scientific Conference on Trends in Economics and Management for the 21st Century, Brno, Czech Republic, 20-22 September 2012

²¹³ Biard, A. (2019). Impact of Directive 2013/11/EU on Consumer ADR quality: evidence from France and the UK. Journal of consumer policy, 42(1), 109-147.

their needs and suitable time²¹⁴. However, the evaluation by the European Commission revealed that cross-border ADR remained at very low levels due to several barriers, such as, traders not always eager to engage in ADR, consumers are often unaware of the cross-border remedies available to them, and there are other practical difficulties, including costs, language barriers, uncertainty about the relevant legislation to apply in a cross-border situation, and a dearth of freely available online processes²¹⁵. Traders are most likely unaware of the potential benefits of engaging in ADR, such as resolving disputes more quickly, avoiding costly and time-consuming litigation, and preserving the relationship between the parties.

Other limitations or obstacles found include for example language problems. According to Knudsen, it is said that language problems tend to be the main obstacle withholding ADRs being effective in cross-border complaint handling. Based on a study, it was found that only 16% of Alternative Dispute Resolution (ADR) services specify that they exclusively accept complaints in the native language. These results raise questions about the severity of the language problem. 84% of ADRs were able to accept complaints in more than one language and 70% of ADRs were able to take complaints in English, which is an international language. From that data, it seems that problems with language barriers should not occur in most cases²¹⁶. To allow foreign consumers to effectively apply for services, and also cover foreigners living in the EU, ADRs in the EU should accept more than one language, and English in particular. Additionally, from filing a complaint to understanding the decision, consumers should receive language assistance through an ADR procedure. Other problem that Knudsen found was related to legal complexity of cross-border complaints, including lack of resources and competence related to cross-border issues²¹⁷. The survey conducted in 2022 by the ECC-Net identified obstacles consumers face while trying to engage in cross-border ADR. These challenges include a lack of trader engagement and compliance, the difficulty of navigating online procedures, language barriers, as well as a lack of consistency in coverage and quality across countries and sectors. The survey also highlighted traders' unwillingness to participate in the dispute resolution procedure;

²¹⁴ Todorović, I., & Harges, B. (2021). Alternative dispute resolution in the world of commercial disputes. *Journal of Strategic Contracting and Negotiation*, 5(4), 214-221.

²¹⁵ European Commission. (2016). Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market

²¹⁶ Knudsen, L. F., & Bălița, S. (2012). Development of Consumer Cross-border Alternative Dispute Resolution: ADR perspective. In *Proceedings of Scientific Conference on Trends in Economics and Management for the 21st Century*, Brno, Czech Republic, 20-22 September 2012.

²¹⁷ *Ibid.*

however, there are usually no sanctions, which explains why traders may not be interested engaging in ADR²¹⁸.

It's worth considering the establishment of "*negative*" lists for traders not complying with ADR decisions²¹⁹, but also "*positive*" lists, recognising and commending traders who consistently comply with ADR decisions and actively participate in the resolution process. The "*positive*" and "*negative*" lists could be powerful tools to encourage traders to behave responsibly and comply with ADR decisions. They could also help to deter those who do not comply with ADR decisions, as potential customers could use this information to decide whether to engage with them. It is also said that often more than 50% of ADRs take more than 3 months to find a solution. ADR has often been considered a better solution precisely because of its speed, taking into account the fact that most of the time finding a solution takes more than 3 months raises a question if it really is a good fast way to go²²⁰.

The second alternative dispute resolution mechanism involves mediation. Mediation can be described as a process during which disputants work with a third party to resolve conflicts without relying on force or the legal system²²¹. Mediation can help resolve disputes with companies, traders, workplace issues, or even family conflicts, whether they occur domestically or internationally. Settling through mediation typically takes less time and costs less than going to court²²².

Article 3(a) of the European Mediation Directive (Directive 2008/52/EC) defines mediation as a structured process in which two or more disputing parties voluntarily try to reach an agreement on the settlement with the assistance of a mediator²²³. Article 3(b) of the Directive defines mediator as any third person who is asked to conduct a mediation in an effective, impartial and competent way²²⁴. The document "European code of Conduct for mediators" has also been created, which sets guidelines for dealing with mediation. It sets out important guiding principles that mediators could act on and follow. These guidelines are suitable for all mediators involved

²¹⁸ European Consumer Centres Network. (2022). Alternative Dispute Resolution (ADR)

²¹⁹ *Ibid.*

²²⁰ Knudsen, L. F., & Băliņa, S. (2012). Development of Consumer Cross-border Alternative Dispute Resolution: ADR perspective. In Proceedings of Scientific Conference on Trends in Economics and Management for the 21st Century, Brno, Czech Republic, 20-22 September 2012.

²²¹ Bercovitch, J., Anagnoson, J. T., & Wille, D. L. (1991). Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations. *Journal of Peace Research*, 28(1), 7-17. <https://doi.org/10.1177/0022343391028001003>

²²² E-Justice Portal. "Mediation." <https://e-justice.europa.eu/62/EN/mediation> Accessed: 18 October 2023.

²²³ Article 3(a) from the European Mediation Directive (DIRECTIVE 2008/52/EC)

²²⁴ Article 3(b) from the European Mediation Directive (DIRECTIVE 2008/52/EC)

in any type of mediation in civil and commercial matters. This document includes the following points: competence, appointment and fees of mediators and promotion of their services, independence and impartiality, the mediation agreement, process and settlement and confidentiality²²⁵. Mediation has also been implemented in Estonia. The regulation of mediation in civil justice in Estonia is governed by the Conciliation Act. In Estonia, the out-of-court mediation model is somewhat inadequate, as there is a lack of legal framework established by legislation. In Estonian law, the mediator is referred to as a conciliator and is defined as “*a natural person to whom the parties have entrusted the task.*”²²⁶ The Conciliation Act also includes sworn advocates²²⁷ and notaries²²⁸ in the definition of a conciliator. However, there is no available data on mediation outcomes due to inadequate legislation and the inability of the EU directive to promote the practice of mediation in Estonia. As a result, many crucial aspects of mediation are subject to self-regulation.²²⁹

Another alternative that should be considered in cross-border disputes is the European Consumer Center Network (ECC-Net), a network of independently managed offices co-funded by the European Commission and is available in all Member States, as well as in Norway and Iceland²³⁰. The main purpose of ECC-Net is to boost consumer confidence in cross-border transactions by offering free information and advice to consumers and assisting them in resolving cross-border consumer complaints²³¹. Therefore, when consumers face challenges with traders from another EU country, the ECC-Net can provide valuable assistance. ECC-Net closely cooperates with other European Union networks and institutions, as well as with other national consumer protection authorities. The Consumer Conditions Scoreboard 2017²³² shows that the ECC-Net receives more cross-border complaints than alternative dispute resolution bodies or The European Small Claims Procedure²³³. In Estonia, when the violator, in this context, the

²²⁵ EUIPO. “European Code of Conduct for Mediators”.

https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/mediation/adr_ec_code_conduct_en.pdf

²²⁶ Article 2(1) of the Conciliation Act

²²⁷ Article 2(2) of the Conciliation Act

²²⁸ Article 2(3) of the Conciliation Act

²²⁹ Tvaronavičienė, A., Kaminskienė, N., Rone, D., & Uudekull, R. (2022). Mediation in the Baltic States: developments and challenges of implementation. Access to justice in Eastern Europe. Kyiv: Publishing House VD Dakor, 2022, vol. 5, iss. 4.

²³⁰ European Commission, “European Consumer Centres Network - ECC Net.” https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/european-consumer-centres-network-ecc-net_en

²³¹ European Consumer Centres Network. (2019). ECC-Net's Perspective on Geoblocking Regulation (EU) 2018/302

²³² European Commission. (2017). Consumer Conditions Scoreboard

²³³ European Consumer Centres Network. (2019). ECC-Net's Perspective on Geoblocking Regulation (EU) 2018/302

trader, is situated in another country, the complaint is not within the Estonian Consumer Disputes Committee's competence and is therefore forwarded to the European Consumer Centre. As mentioned, the ECC-Net also operates in Estonia. The European Consumer Centre Network in Estonia operates through its dedicated website, <https://consumer.ee/>.

However, analysing the website proves challenging due to the limited information available, including the absence of consumer experiences, which could lead to the website appearing untrustworthy for a user. Nevertheless, the main European Consumer Centre Network website <https://www.eccnet.eu/> offers comprehensive information, featuring annual reports, statistics about Estonia, and all the latest relevant news. Strangely, Ecc-Net Estonia does not appear to share these news on their website. Moreover, the website provides different information depending on the chosen language (Estonian or English). Also it is worth noting that while ECC-Net Estonia offers assistance in Estonian and English, consumers speaking other languages may encounter language barriers when seeking help. A Facebook search for ECC-Net Estonia's feedback revealed criticisms such as "*the process was very time-consuming*" and "*received no help*", suggesting that consumers may face delays or encounter difficulties in obtaining assistance. Although ECC-Net Estonia can provide valuable advice and assistance to consumers, it lacks the authority to enforce consumer protection laws or make decisions on behalf of consumers. Some disputes may be too complex for ECC-Net Estonia to handle effectively, prompting consumers to seek assistance from legal professionals with expertise in cross-border disputes. Resolving a cross-border dispute through ECC-Net Estonia can be a very time-consuming process, potentially frustrating consumers in need of a quick resolution to their problems.

The European Online Dispute Resolution (ODR) is an interactive website offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court which have arisen from online transactions²³⁴. This platform is designed to address consumer problems and is free to use for all customers and traders, helping to resolve potential disputes that may arise from online purchases²³⁵ and is available in all the official languages of the institutions of the Union. It facilitates direct communication with a trader to discuss a solution for the problem or to agree on a dispute resolution body to handle the case²³⁶. Thus, ODR platform serves as a communication

²³⁴ Recital (18) of the Regulation on Consumer ODR (Regulation (EU) No 524/2013)

²³⁵ European Commission. "Online Dispute Resolution". <https://ec.europa.eu/consumers/odr/main/?event=main.trader.register> Accessed: 18 October 2023.

²³⁶ European Commission. "Online Dispute Resolution". <https://ec.europa.eu/consumers/odr/main/?event=main.trader.register> Accessed: 18 October 2023.

tool between a consumer and a trader and facilitates the electronic transmission of a dispute. While it does not directly resolve complaints, the platform enables the parties to send the dispute to a competent ADR entity for resolution, as agreed upon by the parties.²³⁷ However, this platform also has its limitations. When filing a complaint, the consumer must provide as much detail as possible about the goods or services bought online, including which goods or services were purchased, when they were purchased, and the amount paid²³⁸. Therefore, it is not possible to use it for the prevention of possible damage. There are more limitations found, such as the consumer must live in an EU country or in Norway, Iceland, or Liechtenstein, and the trader must be based in an EU country or in Norway, Iceland, or Liechtenstein. Even more importantly, there are time limits; such as, consumer and trader must reach an agreement within 90 days and if the parties are unable to reach an agreement within the set deadline, the case will automatically be closed after 30 days²³⁹. Afterward, the consumer has the opportunity to seek help from other authorities that handle complaints, such as the European Consumer Centres Network²⁴⁰, or take legal action.

²³⁷EESTI.EE. “Consumer protection in the European Union and resolving cross-border complaints.” <https://www.eesti.ee/en/consumer-protection/settlement-of-disputes/consumer-protection-in-the-europe-an-union-and-resolving-crossborder-complaints> Accessed: 18 October 2023.

²³⁸ Annex of Regulation on Consumer ODR (Regulation (EU) No 524/2013)

²³⁹ Article 9 (8) of Regulation on Consumer ODR (Regulation (EU) No 524/2013)

²⁴⁰EESTI.EE. “Consumer protection in the European Union and resolving cross-border complaints.” <https://www.eesti.ee/en/consumer-protection/settlement-of-disputes/consumer-protection-in-the-europe-an-union-and-resolving-crossborder-complaints> Accessed: 18 October 2023.

3.3. Judicial Proceedings

The most obvious legal option for consumers to stand up for their rights is to take their case to court. This topic will be only briefly discussed, as it may become quite extensive, primarily due to the diverse rules on court proceedings that exist among Member States. Besides, it is unlikely that consumers would willingly pursue legal action in another state solely due to geo-discriminatory practices affecting them. Therefore, judicial proceedings should always remain the last resort in resolving a problem. In the event of a dispute, the initial recourse should involve negotiation through direct communication with the trader to seek a potential resolution or, in the context of this thesis, to put an end to discrimination. If the consumer does not achieve a positive outcome with the trader, then for the next step the consumer should consider alternative dispute mechanisms that were mentioned in the previous chapter. In any case, the consumer retains the option to submit a complaint to the court. However, it is crucial to note that the complaint should be forwarded to the national court of the violator. Thus, in the case of a violator located in another state, the complaint should be submitted to that particular state. Depending on the country's system, it may also be possible to seek the help of the Ombudsman or the Chancellor of Justice²⁴¹. When uncertainties arise regarding the accurate interpretation of EU law, they are brought before the Court of Justice of the European Union (CJEU) for resolution.

When appealing to a foreign court, it is important to check all the national procedural rules that must be followed, for example in Estonia, judicial proceedings and clerical business at the court are conducted only in the Estonian language²⁴². In addition, if the court receives a claim in a language other than Estonian, the court requires the person who filed the document to provide its Estonian translation by the due date set by the court²⁴³. Therefore, any complaints submitted incorrectly are automatically left unreviewed, without an assessment of their legality or content. It is very important to follow all these rules and keep in mind that these rules vary from one Member State to another. Proper documentation is crucial in any legal procedure. This includes ensuring that all necessary information and evidence is present, as well as providing clear and concise explanations for the judge and the opposing party. This helps to ensure a fair and

²⁴¹ See more information: European Ombudsman. "Members of the European Network of Ombudsmen." <https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/members/all-members> Accessed: 19 October 2023.

²⁴² Article 32 (1) of the Code of Civil Procedure

²⁴³ Article 33 (1) of the Code of Civil Procedure

efficient legal process²⁴⁴. It is also worth noting that the EU has established several measures to facilitate cross-border disputes, such as the European Small Claims Procedure²⁴⁵, which allows consumers to seek redress for small claims in another EU country.

Returning to the topic of discriminatory practices by the Finnish brand X, Estonian consumers are able to take legal action. However, as the company is located in Finland, the consumer must file a complaint to the Finnish authorities²⁴⁶. Legal proceedings tend to be complex and costly, even in the absence of compensatory damages, and almost invariably necessitate the guidance of a lawyer. It should be noted again that other options should be considered before pursuing legal action. Although, anyone has the right to to pursue formal legal action and stand for rights. However, it is also important to consider the potential costs of legal action, such as legal fees, travel costs and the amount of time that may be required to pursue the case. Additionally, it is necessary to consider the potential outcomes of legal action, such as the potential for an unfavourable outcome or a lengthy legal battle. Although it may seem like a better option to take legal action when a dispute arises, a process that prioritises problem-solving may be more appropriate and practical than one focused on reaching a decision or judgement²⁴⁷.

3.4. Recommendations

Based on the analysis concluded throughout this paper of distinct areas of the European anti-discrimination framework and Estonian legislation regarding online consumer discrimination based on location, several policy recommendations can be made to further strengthen consumer protection and the work of competent authorities. Despite the EU's consumer protection being recognised as one of the strictest, consumers still encounter various challenges, preventing them from fully benefiting from the Digital Single Market. The following recommendations have been made based on the analysis and portrayal of problems. First and foremost, consumers should be educated and made aware, as it can be difficult for average

²⁴⁴ E-Justice Portal. "Which country's court is responsible?"

https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible Accessed: 16 December 2023.

²⁴⁵ Small Clams Procedure has limit of 5000 euros, see: European Union. "European Small Claims procedure" https://europa.eu/youreurope/business/dealing-with-customers/solving-disputes/european-small-claims-procedure/index_en.htm Accessed: 16 December 2023.

²⁴⁶ For additional details on Finnish enforcement see:

E-Justice Portal. "Enforcement" <https://e-justice.europa.eu/37165/EN/enforcement?FINLAND&member=1> Accessed: 16 December 2023.

²⁴⁷ Blake, S. H., Browne, J., & Sime, S. (2016). A practical approach to alternative dispute resolution. Oxford University Press

consumers to determine if they are being subjected to online consumer discrimination, much less identify when it is based solely on geography. Hence, it is imperative to specifically address and incorporate online consumer discrimination based on nationality or residence into the legal framework.

Moreover, the process of making consumers further aware of the problems occurring in the DSM and all the prohibited trading practices without diving into an endless pile of regulations will improve the effectiveness and comprehensiveness of any information initiatives. By providing consumers with information, they can become more aware of violations and identify obstacles more easily. It is important for consumers to know their rights and to protect them from being discriminated against in DSM²⁴⁸. This should be made very accessible and convenient for individuals without requiring excessive effort, for example, by using the latest technology.

One potential solution involves the creation of a user-friendly website, where individuals can file complaints, specifically addressing discriminatory practices based on nationality or residence, and ultimately encompassing all forms of discriminatory behaviour. While there is already an ODR platform, it has its limitations, for example, damage must already be caused by the trader. The ODR platform should be enhanced, and the requirements for reporting purchases should be modified to include practices that are prohibited, even if consumers have not yet suffered any harm. Another improvement should focus on ensuring the accessibility of every consumer protection website in all languages, thus ensuring access for all consumers across the European Union and its Member States. Although the EU has facilitated this for almost all platforms, states must adhere, and every consumer should have the ability to contact every consumer protection committee in any EU state in their native language. This could be accomplished through the use of AI digital tools, such as Kratt²⁴⁹, which can assist in overcoming language barriers by automatically translating content to the required language or aiding consumers in filing complaints. Additionally, chatbots can be employed to communicate with consumers ongoing, potentially educating more users. This, in turn, could increase consumer awareness as it becomes easier to find relevant content.

²⁴⁸Schulte-Nölke, H., Zoll, F., Macierzyńska-Franaszczyk, E., Sebastian, S., Charlton, S., Barmscheid, M., & Kubela, M. (2013). Discrimination of 16 Consumers in the Digital Single Market. Studies requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO).

²⁴⁹ See: Vaher, K. (2020). Next Generation Digital Government Architecture. Republic of Estonia GCIO Office.

Furthermore, the EU should develop a digital tool capable of identifying inappropriate behaviour or dark patterns on websites. This tool should promptly notify the relevant authorities to conduct investigations if necessary and take appropriate action. The goal would be to prevent discriminatory practices from happening and end them sooner, while also taking the responsibility off the consumers to be aware and alert of such unfair practices. It is imperative that consumers should not be burdened with the responsibility of identifying or experiencing these dark patterns and consistently reporting them. Rather, consumer protection authorities should possess a digital tool capable of autonomously analysing every online store and promptly alerting when such practices are detected. Thus, bringing such complaints to public attention when justified and establishing a blacklist of unfair terms that are always prohibited should be introduced and updated regularly²⁵⁰. This measure would effectively address geo-discriminatory practices, fostering transparency and accountability within businesses. Offering businesses examples of both exceptional and destructive practices can prompt them to reconsider their strategies and thus consequently minimise the occurrence of unjustified geo-discriminatory practices. In addition, Member States should adapt all strict consumer protection regulations to national laws and step up enforcement of all anti-discrimination laws in the EU. It is crucial to establish an effective anti-discrimination framework to ensure the highest level of consumer protection at the same level throughout all EU Member States. Additionally, there is a critical need for a more precise and targeted approach in addressing geo-discrimination within the EU.

Therefore, all online stores should prominently disclose their internal market policies, specifically in the context of this thesis, indicating the countries from which they accept orders, whether they have different requirements for various countries, and providing the objective reasons for differentiation²⁵¹. Additionally there should be full transparency on pricing policies. Thus, stricter penalties for companies and higher remedies for consumers should be implemented for companies found guilty of employing unjustified discriminatory practices.

Regarding Alternative Dispute Resolutions (ADRs) and the reluctance of traders to participate, this issue should be addressed. The consideration of establishing “*positive*” lists is also pertinent, acknowledging and commending traders consistently adhering to ADR decisions and actively

²⁵⁰ Šajn, N. (2019). Protecting European consumers. European Parliamentary Research Service. Retrieved from: https://what-europe-does-for-me.eu/data/pdf/focus/focus22_en.pdf

²⁵¹ Schulte-Nölke, H., Zoll, F., Macierzyńska-Franaszczyk, E., Sebastian, S., Charlton, S., Barmscheid, M., & Kubela, M. (2013). Discrimination of Consumers in the Digital Single Market. Studies requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO).

engaging in the resolution process. The implementation of "*positive*" and "*negative*" lists could serve as a potent tool to incentivize responsible behaviour among traders, encouraging compliance with ADR decisions. Furthermore, it could act as a deterrent for those non-compliant with ADR decisions, allowing potential customers to make informed decisions about engaging with such entities.

Lastly, another improvement should be undertaken by the Estonian Consumer Protection Committee, which should entertain preventive complaints without the requirement of actual loss. Additionally, the Committee should have the capacity to represent consumers in cross-border proceedings if it is relevant to the general interests of Estonian consumers or if a discriminatory effect can be observed for all Estonians.

CONCLUSION

The aim of this thesis was to conduct a comprehensive examination of all EU legal frameworks potentially capable of addressing online consumer discrimination based on nationality or residence. The overarching goal was to assist the average consumer in navigating the diverse legal frameworks concerning online discrimination while highlighting possibilities to safeguard fundamental rights. However, the landscape of consumer discrimination has evolved over time, becoming increasingly complex. In the past, specific groups faced discrimination based on factors such as race, sex, specific nationalities, or even individuals with specific worldviews. In today's world, anyone could easily become a target of discrimination, especially online. Despite the EU's robust consumer protection measures, consumers still encounter a range of challenges²⁵².

One of the reasons is the era of “*big data*”, which has enabled greater potential for price discrimination and greater potential for discrimination on the basis of nationality or residence. Currently, businesses are able to use machine learning to leverage large volumes of data, which allows businesses to derive new insights, generate knowledge, and implement informed actions²⁵³. Therefore, the possibility of price differentiation and consumer discrimination has become easier. Consumers can be filtered based on a number of factors, including their location, device used, past purchases or behaviours online, or more commonly, a combination of these factors, which allow suppliers or sellers to offer tailored prices based on differences between consumer profiles²⁵⁴. One specific technique with tracking ability used in digital mapping and analysis to distinguish consumers by collecting geographic data about its customer²⁵⁵ is geo-filtering, which can be immensely useful tool for the trader to intentionally discriminate based on location. It allows traders or developers to refine consumers by specific geographic

²⁵² Šajn, N. (2019). Protecting European consumers. European Parliamentary Research Service. Retrieved from: https://what-europe-does-for-me.eu/data/pdf/focus/focus22_en.pdf

²⁵³ Jabłowska, A., Kuziemski, M., Nowak, A. M., Micklitz, H. W., Pałka, P., & Sartor, G. (2018). Consumer law and artificial intelligence: Challenges to the EU consumer law and policy stemming from the business' use of artificial intelligence-final report of the ARTSY project. EUI Department of Law Research Paper, (2018/11).

²⁵⁴ Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.

²⁵⁵ Bar-Gill, O. (2018). Algorithmic price discrimination: When demand is a function of both preferences and (mis) perceptions. Forthcoming, *University of Chicago Law Review*, 86, 18-32.

boundaries, such as countries or cities. The practice itself is called geo-blocking and consists of three common types of market practices, such as, simple refusal to sell, automatic re-routing, and unjustified diversifying of sale conditions²⁵⁶. This supports the hypothesis that strategies employed by online stores not only violate consumers' interests but also impede the ultimate objective of the EU's Digital Single Market by restricting consumers from fully utilising the benefits of the free movement of goods.

In the discourse on geo-discriminatory trading practices based on nationality or residence, particularly those lacking objective justification and thus deemed unjustified, it may appear that the EU has implemented numerous regulations to address such issues. However, a detailed examination of the geo-discrimination legal framework reveals that, despite its prohibition, various limitations persist. An infringement of European Competition Law is often the first consideration that comes to mind. While Article 18 of the TFEU ultimately provides individuals with the right not to be discriminated against on the grounds of nationality, the effective enforcement and consistent application of this provision pose ongoing challenges within the complex landscape of geo-discrimination. However, its scope is rather limited, as very specific conditions must be met for it to be successful in addressing online price discrimination. Only Article 102 of the TFEU can be identified as potentially applicable to geo-discrimination, but the company must have “*market power*” or be a “*dominant firm*” to be applicable.

Consumer protection law has directives that may tackle online consumer discrimination, but only to a limited extent. The Consumer Rights Directive requires businesses to provide clear information regarding the use of personalised pricing; therefore, this directive applies only when the business is not providing such information. The Unfair Commercial Practices Directive regulates engaging in misleading marketing or aggressive commercial practices; this directive applies only when such practices are used. The Unfair Contract Terms Directive offers consumers protection against unfair pre-drafted contractual terms; hence, when a consumer lacks awareness of how prices are calculated, coupled with a lack of transparency on the matter, this Directive comes into play.

²⁵⁶ Schulte-Nölke, H., Zoll, F., Macierzyńska-Franaszczyk, E., Sebastian, S., Charlton, S., Barmscheid, M., & Kubela, M. (2013). Discrimination of Consumers in the Digital Single Market. Studies requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO).

Additionally, the General Data Protection Regulation addresses the protection of personal data, which is particularly relevant in the context of online consumer interactions. It relies heavily on transparency to determine where users' information will be shared, what data will be collected, and how it will be used. Therefore, when consumers' personal data is used in this context for price discrimination without their consent, it violates the GDPR. The ePrivacy Directive applies when cookies are used, which is a common practice in personalisation. Thus, without information about tracking cookies and without consent to cookies, it violates the ePrivacy Directive.

In its efforts to address discrimination directly, the EU has issued various non-discrimination provisions, including the Racial Equality Directive, Employment Equality Directive, Gender Equality Directive, and Gender Goods and Services Directive. However, these directives explicitly define and prohibit protected categories, making them not directly applicable to online geo-discrimination issues. Legal action under these directives is only possible when a discrimination case involves one of the explicitly defined protected categories. However, when it comes to price discrimination practices, proving their violation could be very challenging.

The Services in the Internal Market Directive explicitly prohibits discriminatory requirements based on the recipient's nationality or place of residence. However, its scope is confined to the free movement of services between Member States, rendering it inapplicable to goods, except for the distribution of goods (such as transport, wholesale, retail, after-sale services) and the performance of a service activity.

The Geo-blocking Regulation prohibits unjustified discrimination between EU customers in access to goods and services based on the customer's nationality, residence, or establishment, provided the foreign customer accepts the conditions applied domestically (the right to "shop like a local"). However, justified reasons exist for traders to restrict or limit access for copyright-protected content services, such as software, e-books, video games, and online music. In all other cases, restricting or limiting access to their online interfaces for customers in other Member States constitutes a violation of this Regulation.

As for consumers' legal options, depending on where the violator is located, consumers have different opportunities to pursue. The first step should always be contacting the trader directly, and if this is not possible, there is the ODR platform, designed to address consumer problems. It

is free to use for all customers and traders, assisting in resolving potential disputes that may arise from online purchases²⁵⁷. However, it has limitations, such as requiring consumers to provide detailed information about the online goods or services they purchased, including specifics about the items, purchase date, and amount paid when filing a complaint²⁵⁸. Consequently, it may not be suitable for preventing potential damages. Even more importantly, there are time limits; such as, consumer and trader must reach an agreement within 90 days and if the parties are unable to reach an agreement within the set deadline, the case will automatically be closed after 30 days²⁵⁹.

Afterward, the consumer has the opportunity to seek help from other authorities that handle complaints, in Estonia, the Consumer Disputes Committee, which is competent to settle out-of-court disputes arising from contracts between consumers and traders if the parties have not been able to settle the disputes by agreement²⁶⁰. However, when submitting a complaint, there is a requirement for documentary evidence²⁶¹. Due to this limitation, the Committee is incapable of addressing preventive disputes, particularly those concerning online price discrimination or possibly geo-discrimination that has not transpired but has been identified by the consumer. Secondly, the Committee is not competent to resolve consumer disputes arising from a business-to-consumer contract between a consumer and a trader if the trader is not registered in Estonia²⁶². Another possibility is to contact the Chancellor of Justice, which may be the best option for an average consumer, as it is not mandatory to have all the evidence; if necessary, the Chancellor of Justice can collect evidence on his or her own initiative²⁶³. Moreover, the requirements for filing a complaint are minimal; the complainant has the right to submit a petition orally²⁶⁴. While it may appear that the Chancellor of Justice is the key to protecting the interests of consumers, there are some limitations. In order to enter into conciliation proceedings, the consent of both parties is required. If a person, for instance, the party that is engaging in discriminatory practices, refuses to participate, the Chancellor of Justice

²⁵⁷ European Commission. "Online Dispute Resolution".

<https://ec.europa.eu/consumers/odr/main/?event=main.trader.register> Accessed: 18 October 2023.

²⁵⁸ Annex of Regulation on Consumer ODR (Regulation (EU) No 524/2013)

²⁵⁹ Article 9 (8) of Regulation on Consumer ODR (Regulation (EU) No 524/2013)

²⁶⁰ Article 22(2) of Consumer Protection Act

²⁶¹ Article 26(4) of Consumer Protection Act

²⁶² Consumer Protection and Technical Regulatory Authority. "About Consumer Disputes Committee." <https://ttja.ee/en/about-consumer-disputes-committee> Accessed: 18 October 2023

²⁶³ Chancellor of Justice Act Article 21(1)

²⁶⁴ Chancellor of Justice Act Article 23(6)

terminates the proceedings²⁶⁵. In cross-border disputes, depending on the country's system, it may also be possible to seek the help of the Ombudsman or the Chancellor of Justice²⁶⁶

The consumer can explore other options, such as alternative dispute resolution methods, which offer several advantages over traditional court proceedings, including accessibility, simplicity, speed, and cost-effectiveness²⁶⁷, making it a more suitable option for both parties because it offers several benefits over traditional court proceedings. However, the evaluation by the European Commission revealed that cross-border ADR remained at very low levels due to several barriers, such as, traders not always eager to engage in ADR, consumers are often unaware of the cross-border remedies available to them, and there are other practical difficulties, including costs, language barriers, uncertainty about the relevant legislation to apply in a cross-border situation²⁶⁸. Another alternative that should be considered in cross-border disputes is the European Consumer Center Network (ECC-Net), which is a network of independently managed offices co-funded by the European Commission and is available in all Member States, as well as in Norway and Iceland²⁶⁹. ECC-Net closely cooperates with other European Union networks and institutions, as well as with other national consumer protection authorities. Although ECC-Net can provide valuable advice and assistance to consumers, it lacks the authority to enforce consumer protection laws or make decisions on behalf of consumers. Some disputes may be too complex for ECC-Net to handle effectively, prompting consumers to seek assistance from legal professionals with expertise in cross-border disputes. Resolving a cross-border dispute through ECC-Net could be a very time-consuming process, potentially frustrating consumers in need of a quick resolution to their problems.

Lastly, the most apparent legal recourse for consumers seeking to assert their rights is to pursue their case in court. However, it is imperative to adhere to the specific rules governing legal procedures, acknowledging the variations across Member States. Thorough documentation plays

²⁶⁵ Estonian Chancellor of Justice. "Muud ülesanded." <https://www.oiguskantsler.ee/et/node/7057> Accessed: 3 September 2023.

²⁶⁶ See more information: European Ombudsman. "Members of the European Network of Ombudsmen." <https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/members/all-members> Accessed: 19 October 2023.

²⁶⁷ Biard, A. (2019). Impact of Directive 2013/11/EU on Consumer ADR quality: evidence from France and the UK. *Journal of consumer policy*, 42(1), 109-147.

²⁶⁸ European Commission. (2016). Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market

²⁶⁹ European Commission, "European Consumer Centres Network - ECC Net." https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/european-consumer-centres-network-ecc-net_en

a pivotal role in any legal proceeding, encompassing the inclusion of all necessary information and evidence, as well as the provision of clear and concise explanations for the judge and the opposing party. This ensures a fair and efficient legal process. Legal proceedings tend to be intricate and costly, even without compensatory damages, often requiring the guidance of a lawyer. Additionally, considering potential costs, such as legal fees, travel expenses, and the time commitment involved, is crucial. It is worth noting that the EU has instituted various measures to facilitate cross-border disputes, including the European Small Claims Procedure, enabling consumers to seek redress for small claims in another EU country.

After a thorough examination within this paper the following recommendations aim to strengthen consumer protection and competent authorities' efforts, addressing all identified deficiencies:

- (1) Consumer education: enhancing awareness through user-friendly websites, AI tools like Kratt for language assistance, and chatbots for ongoing communication to educate consumers effectively;
- (2) ODR platform enhancement: improving the Online Dispute Resolution (ODR) platform by modifying reporting requirements to include prohibited practices even before harm occurs;
- (3) Multilingual accessibility: ensuring accessibility of consumer protection websites in all languages, facilitated by AI tools, allowing consumers to contact any protection authority in their native language;
- (4) “Dark pattern” detection tool: developing a digital tool to identify inappropriate behavior on websites, notifying authorities for investigations and preventive actions against discriminatory practices;
- (5) “Blacklist” of unfair practices: establishing and regularly updating a blacklist of unfair terms, creating transparency and accountability within businesses to address geo-discriminatory practices;
- (6) Alignment with national laws: adapting strict consumer protection regulations to national laws, emphasising enforcement of anti-discrimination laws uniformly across EU Member States;
- (7) Transparency in market policies: mandating online stores to disclose market policies, especially regarding order acceptance from different countries and objective reasons for differentiation, ensuring pricing policy transparency and complying with the law;

- (8) Stricter penalties and higher remedies: Implementing stricter penalties for companies engaging in unjustified discriminatory practices, coupled with higher remedies for affected consumers;
- (9) ADR participation incentives: Addressing traders' reluctance to participate in Alternative Dispute Resolutions (ADRs) by considering the establishment of "positive" lists to commend compliant traders and deter non-compliance;
- (10) Preventive complaints: Allowing the Estonian Consumer Protection Committee to entertain preventive complaints without the requirement of actual loss, and enable representation of Estonian consumers in cross-border proceedings when relevant to general interests or discriminatory effects on all Estonian consumers.

In conclusion, for the European Union to provide a high level of consumer protection across its Member States, all differences in consumer protection within Member States must be eliminated and improved collectively. Only if all countries unite their efforts makes it possible to ensure consumer protection at the highest level and therefore tackle unjustified geo-discrimination in e-commerce. Legal rules are merely pieces of paper; their meaningfulness relies on effective enforcement²⁷⁰.

²⁷⁰ Bourreau, M., & De Streel, A. (2018). The regulation of personalised pricing in the digital era.

LIST OF REFERENCES

Books

- Aguirre, I. (2009). Chapter 1: Monopoly II. Notes on Microeconomic Theory IV.
- Blake, S. H., Browne, J., & Sime, S. (2016). A practical approach to alternative dispute resolution. Oxford University Press.
- Carlton, D. W., & Perloff, J. M. (2005). Modern industrial organization.
- Mnookin, R.H. (2002). Alternative Dispute Resolution. In: Newman, P. (eds) The New Palgrave Dictionary of Economics and the Law. Palgrave Macmillan, London. 56-60
https://doi.org/10.1007/978-1-349-74173-1_14
- Shiller, B. R. (2013). First degree price discrimination using big data (p. 32). Brandeis Univ., Department of Economics.

Scientific articles and journals

- Bar-Gill, O. (2018). Algorithmic price discrimination: When demand is a function of both preferences and (mis) perceptions. Forthcoming, University of Chicago Law Review, 86, 18-32.
- Biard, A. (2019). Impact of Directive 2013/11/EU on Consumer ADR quality: evidence from France and the UK. Journal of consumer policy, 42(1), 109-147.
- Bercovitch, J., Anagnoson, J. T., & Wille, D. L. (1991). Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations. Journal of Peace Research, 28(1), 7-17. <https://doi.org/10.1177/0022343391028001003>
- Bergemann, D., Brooks, B., & Morris, S. (2015). The limits of price discrimination. American Economic Review, 105(3), 921-957.
- Borgesius, F. Z. (2019). Algorithmic decision-making, price discrimination, and European non-discrimination law. European Business Law Review (Forthcoming).
- Bourreau, M., & De Streel, A. (2018). The regulation of personalised pricing in the digital era.
- Drechsler, L. (2018). The price is (not) right: Data protection and discrimination in the age of pricing algorithms. European Journal of Law and Technology (2018), 9(3)
- Duch-Brown, N., & Martens, B. (2016). The economic impact of removing geo-blocking restrictions in the EU Digital Single Market. Néstor Duch-Brown, Bertin Martens.

- Flórez Rojas, M. L. (2018). Are online consumers protected from geo-blocking practices within the European Union?. *International Journal of Law and Information Technology*, 26(2), 119-141.
- Graef, I. (2017). Algorithms and fairness: What role for competition law in targeting price discrimination towards ends consumers. *Colum. J. Eur. L.*, 24, 541.
- Hannak, A., Soeller, G., Lazer, D., Mislove, A., & Wilson, C. (2014, November). Measuring price discrimination and steering on e-commerce web sites. In *Proceedings of the 2014 conference on internet measurement conference* (pp. 305-318).
- Hamulák, O., Kiss, L. N., Gábriš, T., & Kocharyan, H. (2021). “This Content is not Available in your Country” A General Summary on Geo-Blocking in and Outside the European Union. *International and Comparative Law Review*, 21(1), 153-183.
- Henriques, A. A. (2022). The (unclear) relationship between a personalised price term and the unfair contractual terms directive (Doctoral dissertation).
- Jabłonowska, A., Kuziemski, M., Nowak, A. M., Micklitz, H. W., Pałka, P., & Sartor, G. (2018). Consumer law and artificial intelligence: Challenges to the EU consumer law and policy stemming from the business' use of artificial intelligence-final report of the ARTSY project. *EUI Department of Law Research Paper*, (2018/11).
- Knudsen, L. F., & Bāliņa, S. (2012). Development of Consumer Cross-border Alternative Dispute Resolution: ADR perspective. In *Proceedings of Scientific Conference on Trends in Economics and Management for the 21st Century*, Brno, Czech Republic, 20-22 September 2012
- Liddell, R., O’Flaherty, M. (2018). *Handbook on European non-discrimination law*. European Union Agency for Fundamental Rights.
- Malmet, H. (2021). Consumer dispute resolution in Estonia: a proposal for revision and modification of general dispute resolution mechanism.
- Mazziotti, G. (2015). Is geo-blocking a real cause for concern in Europe?. *EUI Department of Law Research Paper*, (2015/43).
- Ndubisi, N. O. (2005). Gender differences in customer behavioural responses to sales promotion. *Asia Pacific Management Review*, 10(3), 175-185.
- Noble, S. U. (2018). *Algorithms of oppression*. In *Algorithms of oppression*. New York university press.
- O'donnell, G. (2004). Why the rule of law matters. *J. Democracy*, 15, 32.
- Pehrsson, E. (2018). The meaning of the GDPR Article 22. *European Union Law Working Papers*, (31), 37.
- Pike, C. (2016). Price Discrimination. *OECD Competition Papers*, 2016, Available at SSRN: <https://ssrn.com/abstract=3481907> or <http://dx.doi.org/10.2139/ssrn.3481907>

- Rossi, L. S. (2020). Framing the Principle of NonDiscrimination on Grounds of Nationality. Article 18 (1) TFEU in the ECJ case law. *Il Diritto Dell'unione Europea*, (2).
- Roy, A., & Marsoof, A. (2017). Geo-Blocking, VPNs and Injunctions". *European Intellectual Property Review*, 39(11), 672-680
- Schulte-Nölke, H., Zoll, F., Macierzyńska-Franaszczyk, E., Sebastian, S., Charlton, S., Barmscheid, M., & Kubela, M. (2013). Discrimination of Consumers in the Digital Single Market. Studies requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO).
- Sears, A. M. (2019). The limits of online price discrimination in Europe. *Colum. Sci. & Tech. L. Rev.*, 21, 1.
- Simonelli, F. (2016). Combatting Consumer Discrimination in the Digital Single Market: Preventing Geo-Blocking and other Forms of Geo-Discrimination.
- Snell, J. (2008). Freedom to provide services in the case law and in the services directive: problems, solutions, and institutions. *The Services Directive: Consequences for the Welfare State and the European Social Model*, 171-98.
- Spindler, G., & Schmechel, P. (2016). Personal data and encryption in the European general data protection regulation. *J. Intell. Prop. Info. Tech. & Elec. Com. L.*, 7, 163.
- Steppe, R. (2017). Online price discrimination and personal data: A General Data Protection Regulation perspective. *Computer law & security review*, 33(6), 768- 785.
- Todorović, I., & Harges, B. (2021). Alternative dispute resolution in the world of commercial disputes. *Journal of Strategic Contracting and Negotiation*, 5(4), 214-221.
- Townley, C., Morrison, E., & Yeung, K. (2017). Big data and personalized price discrimination in EU competition law. *Yearbook of European Law*, 36, 683-748.
- Tvaronavičienė, A., Kaminskienė, N., Rone, D., & Uudekull, R. (2022). Mediation in the Baltic States: developments and challenges of implementation. *Access to justice in Eastern Europe*. Kyiv: Publishing House VD Dakor, 2022, vol. 5, iss. 4.
- Vaher, K. (2020). Next Generation Digital Government Architecture. Republic of Estonia GCIO Office.
- van der Rest, J. P. I., Sears, A. M., Miao, L., & Wang, L. (2020). A note on the future of personalized pricing: Cause for concern. *Journal of Revenue and Pricing Management*, 19, 113-118.
- Šajn, N. (2019). Protecting European consumers. European Parliamentary Research Service. Retrieved from: https://what-europe-does-for-me.eu/data/pdf/focus/focus22_en.pdf
- Zuiderveen Borgesius, F., & Poort, J. (2017). Online price discrimination and EU data privacy law. *Journal of consumer policy*, 40, 347-366.

Ward, M. (2000). Amazon's old customers' pay more'. URL <http://news.bbc.co.uk/1/hi/business/914691.stm>.

EU legislation

Charter of Fundamental Rights of the European Union

Consolidated version of the Treaty on the Functioning of the European Union

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')

Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules

Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters

European Convention on Human Right

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

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

Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)

Estonian legislation

Chancellor of Justice Act

Code of Civil Procedure

Conciliation Act

Consumer Protection Act

The Constitution of the Republic of Estonia

Case law

Case C-70/10, *Scarlet Extended SA v. Société Belge des Auteurs, Compositeurs et Éditeurs SCRL (SABAM)*, 2011 E.C.R. I-11959

Case C-582/14, *Breyer v. Bundesrepublik Deutschland*, 2016 E.C.R. 779

C-360/15 and C-31/16, *College van Burgemeester en Wethouders van de gemeente Amersfoort v. X BV and Visser Vastgoed Beleggingen BV v. Raad van de gemeente Appingedam*, 2018 ECLI:EU:C:2018:44

Case C-525/16, *MEO – Serviços de Comunicações e Multimédia SA v Autoridade da Concorrência*. ECLI:EU:C:2018:270

Other sources

- Consumer Protection and Technical Regulatory Authority. "About Consumer Disputes Committee." <https://ttja.ee/en/about-consumer-disputes-committee>. Accessed: 18 October 2023.
- Council of Europe, European Court of Human Rights, European Union Agency for Fundamental Rights. (2019). Handbook on European non-discrimination law : 2018 edition, Publications Office of the European Union. <https://data.europa.eu/doi/10.2811/792676>
- Ecommerce Europe. (2018). Q&A - Regulation on addressing unjustified geo-blocking. <https://www.ecommerce-europe.eu/wp-content/uploads/2019/03/Geo-blocking-QA.pdf>
- EESTI.EE. "Consumer protection in the European Union and resolving cross-border complaints." <https://www.eesti.ee/en/consumer-protection/settlement-of-disputes/consumer-protection-in-the-european-union-and-resolving-crossborder-complaints> Accessed: 18 October 2023.
- Estonian Chancellor of Justice. "Muud ülesanded." <https://www.oiguskantsler.ee/et/node/7057> Accessed: 3 September 2023.
- E-Justice Portal. "Enforcement" <https://e-justice.europa.eu/37165/EN/enforcement?FINLAND&member=1> Accessed: 16 December 2023.
- E-Justice Portal. "Enforcement - Estonia." <https://e-justice.europa.eu/37165/EN/enforcement?ESTONIA&member=1>. Accessed: 16 December 2023.
- E-Justice Portal. "Mediation." <https://e-justice.europa.eu/62/EN/mediation>. Accessed: 18 October 2023.
- E-Justice Portal. "Which country's court is responsible?" https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible Accessed: 16 December 2023.
- EUIPO. "European Code of Conduct for Mediators". https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/mediation/adr_ec_code_conduct_en.pdf
- European Commission, "A Digital Single Market Strategy for Europe" COM/2015/0192 final
- European Consumer Centres Network. (2022). Alternative Dispute Resolution (ADR)
- European Commission. (2017). Consumer Conditions Scoreboard.
- European Consumer Centres Network. (2019). ECC-Net's Perspective on Geoblocking Regulation (EU) 2018/302.

- European Commission, “European Consumer Centres Network - ECC Net.”
https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/european-consumer-centres-network-ecc-net_en
- European Union. “European Small Claims procedure”
https://europa.eu/youreurope/business/dealing-with-customers/solving-disputes/european-small-claims-procedure/index_en.htm Accessed: 16 December 2023.
- European Union. (n.d.). Geo-blocking: addressing discriminatory treatment of customers. EUR-Lex. <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32018R0302>
- European Commission. (2007). Handbook on implementation of the Services Directive.
- European Commission, “New Consumer Agenda Strengthening consumer resilience for sustainable recovery” COM/2020/696 final
- European Union. (n.d.). Non-discrimination - the principle of. EUR-Lex. <https://eur-lex.europa.eu/EN/legal-content/glossary/non-discrimination-the-principle-of.html>
- European Commission. (2015). Key Facts on the new EU Consumer Rights Directive. Retrieved from: https://commission.europa.eu/system/files/2017-08/crd_arc_factsheet-consumer_en.pdf
- European Commission. (2016). Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market
- European Commission, “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/2016/0289 final - 2016/0152 (COD)
- European Commission. “Online Dispute Resolution”.
<https://ec.europa.eu/consumers/odr/main/?event=main.trader.register> Accessed: 18 October 2023.
- European Commission. Questions and answers relating to the Regulation 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 (“Geo-blocking Regulation”)
- European Ombudsman. “Members of the European Network of Ombudsmen.”
<https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/members/all-members> Accessed: 19 October 2023.
- European Union. (n.d.). The EU’s services directive. EUR-Lex. <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32006L0123>

European Union. (n.d.). Protecting consumers from unfair terms in contracts. EUR-Lex. <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:31993L0013>

Kominers (2017) on price discrimination by Uber (<https://perma.cc/2T8E-J5K8>).

Statistikaamet. (2023). Rahvaarv. Retrieved from:

<https://www.stat.ee/et/avasta-statistikat/valdkonnad/rahvastik/rahvaarv>

APPENDICES

Appendix 1. Non-exclusive licence

A non-exclusive licence for reproduction and publication of a graduation thesis²⁷¹

I, Johanna Mäits,

1. Grant Tallinn University of Technology free licence (non-exclusive licence) for my thesis

Revisiting the European Geo-Discrimination Framework: Estonian Consumer Perspective,

supervised by Tanel Kerikmäe,

1.1 to be reproduced for the purposes of preservation and electronic publication of the graduation thesis, incl. to be entered in the digital collection of the library of Tallinn University of Technology until expiry of the term of copyright;

1.2 to be published via the web of Tallinn University of Technology, incl. to be entered in the digital collection of the library of Tallinn University of Technology until expiry of the term of copyright.

2. I am aware that the author also retains the rights specified in clause 1 of the non-exclusive licence.

3. I confirm that granting the non-exclusive licence does not infringe other persons' intellectual property rights, the rights arising from the Personal Data Protection Act or rights arising from other legislation.

03.01.2024

²⁷¹ *The non-exclusive licence is not valid during the validity of access restriction indicated in the student's application for restriction on access to the graduation thesis that has been signed by the school's dean, except in case of the university's right to reproduce the thesis for preservation purposes only. If a graduation thesis is based on the joint creative activity of two or more persons and the co-author(s) has/have not granted, by the set deadline, the student defending his/her graduation thesis consent to reproduce and publish the graduation thesis in compliance with clauses 1.1 and 1.2 of the non-exclusive licence, the non-exclusive license shall not be valid for the period*