

	Commission proposal	Proposed amendment
<p>Recital 6</p>	<p>(6) Considering that some regulatory and administrative barriers for traders have been removed across the Union in certain services sectors as a result of the implementation of Directive 2006/123/EC, in terms of material scope, consistency should be ensured between this Regulation and Directive 2006/123/EC. As a consequence, the provisions of this Regulation should apply <i>inter alia</i> to non-audio-visual electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, subject however to the specific exclusion provided for in Article 4 and the subsequent evaluation of that exclusion as provided for in Article 9. Audio-visual services, including services the main feature of which is the provision of access to broadcasts of sports events and which are provided on the basis of exclusive territorial licenses, are excluded from the scope of this Regulation. Access to retail financial services, including payment services, should therefore also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments.</p>	<p>(6) Considering that some regulatory and administrative barriers for traders have been removed across the Union in certain services sectors as a result of the implementation of Directive 2006/123/EC, in terms of material scope, consistency should be ensured between this Regulation and Directive 2006/123/EC. As a consequence, the provisions of this Regulation should apply <i>inter alia</i> to non-audio-visual electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, subject however to the specific exclusion provided for in Article 4 and the subsequent evaluation of that exclusion as provided for in Article 9. Audio-visual services, including services the main feature of which is the provision of access to broadcasts of sports events and which are provided on the basis of exclusive territorial licenses, are excluded from the scope of this Regulation. Access to retail financial services, including payment services, should therefore also be excluded, notwithstanding the provisions of this Regulation regarding non-discrimination in payments.</p> <p><i>Justification: For the reasons explained in our letter¹, copyright services should be kept <u>outside</u> of the scope of the Regulation. Deleting this reference, as proposed by the Council, will help clarify the situation as the exclusion of copyright services is already mentioned in this same sentence.</i></p>

	Commission proposal	Proposed amendment
<p>Recital 19</p>	<p>The second situation is where the trader provides electronically supplied services, other than services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, such as cloud services, data warehousing services, website hosting and the provision of firewalls. In this case, no physical delivery is required, as the services are being supplied electronically. The trader can declare and pay VAT in a simplified manner in accordance with the rules on VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/201126.</p>	<p>The second situation is where the trader provides electronically supplied services, other than services the main feature of which is the provision of access to and or use of copyright protected works or other protected subject matter, such as cloud services, data warehousing services, website hosting and the provision of firewalls, <u>or selling of copyright protected works and other protected subject matter in an intangible form, such as e-books or online music.</u> In this case, no physical delivery is required, as the services are being supplied electronically. The trader can declare and pay VAT in a simplified manner in accordance with the rules on VAT Mini-One-Stop-Shop (MOSS) set out in Council Implementing Regulation (EU) No 282/201111.</p> <p><i>Justification: For the reasons explained in our letterl, copyright services should be kept <u>outside</u> of the scope of the Regulation. This amendment adopted by the Council will help in this regard.</i></p>

	Commission proposal	Proposed amendment
<p>Article 1, new paragraph 4a</p>		<p>Article 1, new paragraph 4a</p> <p><i>This Regulation shall not affect the rules applicable in the field of copyright and neighbouring rights, notably the rules provided for in Directive 2001/29/EC.</i></p> <p>Justification: <i>For the reasons explained in our letter, copyright services should be kept <u>outside</u> of the scope of the Regulation. This amendment adopted by the Council and the CULT committee will help in this regard.</i></p>

	Commission proposal	Proposed amendment
<p>Article 4, paragraph 1b</p>	<p>1. Traders shall not apply different general conditions of access to their goods or services, for reasons related to the nationality, place of residence or place of establishment of the customer, in the following situations:</p> <p>(...)</p> <p>(b) where the trader provides electronically supplied services, other than services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter;</p>	<p>1. Traders shall not apply different general conditions of access to their goods or services, for reasons related to the nationality, place of residence or place of establishment of the customer, in the following situations:</p> <p>(...)</p> <p>(b) where the trader provides electronically supplied services, other than services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, <i>or the selling of copyright protected works or protected subject matter in an intangible form;</i></p> <p><i>Justification: For the reasons explained in our letter, copyright services should be kept <u>outside</u> of the scope of the Regulation. This amendment adopted by the Council will help in this regard as it specifies that the 'sale' of copyright protected content is also concerned by the exclusion. The CULT committee adopted a similar amendment.</i></p>

	Commission proposal	Proposed amendment
<p>Art.9</p> <p>Review clause</p>	<p>1. By [date: two years after the entry into force of this Regulation] and every five years thereafter, the Commission shall report on the evaluation of this Regulation to the European Parliament, the Council and the European Economic and Social Committee. That report shall, where necessary, be accompanied by a proposal for an amendment of this Regulation, in light of legal, technical and economic developments.</p> <p>2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing whether the prohibition of Article 4(1)(b) should also apply to electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, provided that the trader has the requisite rights for the relevant territories.</p>	<p>1. By [date: two five years after the entry into force of this Regulation] and every five years thereafter, the Commission shall report on the evaluation of this Regulation to the European Parliament, the Council and the European Economic and Social Committee. That report shall, where necessary, be accompanied by a proposal for an amendment of this Regulation, in light of legal, technical and economic developments.</p> <p><i>Justification: As explained in the CULT opinion: “Cultural goods and services – such as e-books and music streaming services – have distinct business models and specific characteristics that require further and careful examination”. We believe a 5-year period would allow for a close and serious examination of the potential impact of the inclusion of such services within the scope of the Regulation.</i></p> <p>2. The first evaluation referred to in paragraph 1 shall be carried out, in particular, with a view to assessing whether the prohibition of Article 4(1)(b) should also apply to electronically supplied services, the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, <u>or the selling of copyright protected works or protected subject matter in an intangible form</u>, provided that the trader has the requisite rights for the relevant territories.</p> <p><i>Justification : For the reasons explained in our letter, copyright services should be kept <u>outside</u> of the scope of the Regulation. This amendment adopted by the Council will help in this regard.</i></p>