



**2015/0284(COD)**

28.9.2016

## **OPINION**

of the Committee on Industry, Research and Energy

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council  
on ensuring the cross-border portability of online content services in the  
internal market  
(COM(2015)0627 – C8-0392/2015 – 2015/0284(COD))

Rapporteur: Carlos Zorrinho

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## **SHORT JUSTIFICATION**

The regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market is an essential component in ensuring the effective creation of the digital single market and laying solid foundations for a digital union in the European Union.

As a regulation, it will impose a binding obligation on all the Member States, from the date of its entry into force, to harmonise procedures in the area for which they are responsible, giving users cross-border access in the whole of the EU to content services for which they have signed contracts in their Member State of residence. It also extends suppliers' ability to provide services for which they were contracted in one Member State across the whole of the EU.

In addition to defining the procedures to be followed in the process of ensuring portability, the regulation also establishes fundamental definitions both for this process and for the development of the digital union.

The present opinion aims to make improvements and clarifications to a number of points as set out below.

### **Content covered**

The content covered by this regulation comprises online content and services such as music, games, films, entertainment programmes and sporting events, that should be accessible not only in subscribers' Member State of residence but also when they are temporarily present in other Member States of the Union. The addition of entertainment games as a target of the regulation aims to strengthen the basis for its implementation.

### **Differentiation between payment for services and payment of licence fees**

Some Member States have a system of fees for access to online content services of general interest. The payment of fees, in particular television licence fees, should not be regarded as payment of money.

### **Guarantee that providers will be bound by the contractual conditions laid down as from the date of entry into force of this regulation**

In order to ensure that portability as provided for by this regulation cannot be subject to modifications resulting from unilateral contractual changes, the obligation to ensure portability will be mandatory, which means that the parties may not exclude it, derogate from it or vary its effect, either by contract or unilaterally by the service provider. Moreover, the providers and holders of rights relevant for the provision of the online content services should not be allowed to circumvent the application of the Regulation by virtue of the choice of the law of a non-member country as the law applicable to contracts signed between them or to contracts between providers and subscribers.

### **Obligation to provide information on service quality**

Where the quality of the online access chosen by a subscriber while temporarily present in

another Member State does not allow the provider to guarantee the same service quality, the provider should not be liable for this situation but should inform the consumer of the possible decline in service quality. If there is an agreement concerning the guaranteed reference quality, the provider will be bound by that agreement and cannot charge the subscriber more for it.

### **Definition of subscriber**

A clarification is made to the effect that the payment of money is not a determining factor in the definition of subscriber.

### **Definition of consumer**

The definition of consumer is expanded to cover legal persons, on condition that they are acting for purposes which are outside their trade, business, craft or profession.

### **Definition of Member State of residence**

The definition of Member State of residence is strengthened to the effect that it means the State where the subscriber habitually resides, or to which he or she regularly returns after spending time in another country.

### **Definition of temporarily present**

The non-permanent feature associated with this definition is strengthened.

### **Verification of the subscriber's Member State of residence**

It is proposed that the effective verification by the provider of the subscriber's place of residence, where no payment of money is made, should be done on the basis of the place of residence for tax purposes, identity card or other valid document confirming the subscriber's residence.

### **Technological neutrality**

In order to ensure technological neutrality, consumers should have the freedom to choose the type of device or technology from among those available on the market in order to access online content.

### **Date of application**

As a reasonable time frame, it is proposed that the regulation should apply from 12 months from the day of its publication, which does not preclude service providers from ensuring portability as soon as they are able to do so pursuant to the regulation published.

## **AMENDMENTS**

The Committee on Industry, Research and Energy calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

## Amendment 1

### Proposal for a regulation

#### Citation 1 a (new)

*Text proposed by the Commission*

*Amendment*

- *having regard to the Charter of Fundamental Rights of the European Union,*

*Justification*

*The Charter is our essential, highest-level legal reference for personal data protection and privacy, which in turn are a basic issue for this Regulation, and accordingly it must be quoted in the “having regards”.*

## Amendment 2

### Proposal for a regulation

#### Recital 1

*Text proposed by the Commission*

*Amendment*

(1) Since the internal market comprises an area without internal frontiers relying, inter alia, on the free movement of services and persons, it is necessary to provide that consumers can use online content services which offer access to content such as music, games, films or sporting events not only in their Member State of residence but also when they are temporarily present in other Member States of the Union. Therefore, barriers that hamper access and use of such online content services cross border should be eliminated.

(1) Since the internal market comprises an area without internal frontiers relying, inter alia, on the free movement of services and persons, it is necessary to provide that consumers can use online content services which offer access to content such as music, games, films, ***entertainment programmes*** or sporting events not only in their Member State of residence but also when they are temporarily present in other Member States of the Union. Therefore, barriers that hamper access and use of such online content services cross border should be eliminated ***as soon as possible, since unimpeded consumer access to audiovisual online content services throughout the European Union is key to a well-functioning digital single market.***

## Amendment 3

### Proposal for a regulation

#### Recital 2

*Text proposed by the Commission*

(2) The technological development leading to a proliferation of portable devices such as tablets and smartphones increasingly facilitates the use of online content services by providing access to them regardless of the consumers' location. There is a rapidly growing demand on the part of consumers for access to content and innovative online services not only in their **home country** but also when they are temporarily present in another Member State of the Union.

*Amendment*

(2) The technological development leading to a proliferation of portable devices such as tablets and smartphones increasingly facilitates the use of online content services by providing access to them regardless of the consumers' location. There is a rapidly growing demand on the part of consumers for access to content and innovative online services not only in their **Member State of residence** but also when they are temporarily present in another Member State of the Union.

**Amendment 4**

**Proposal for a regulation**

**Recital 3**

*Text proposed by the Commission*

(3) Consumers increasingly enter into contractual arrangements with service providers for the provision of online content services. However, consumers that are temporarily present in another Member State of the Union often cannot access and use the online content services that they have acquired the right to use in their **home country**.

*Amendment*

(3) Consumers increasingly enter into **paid as well as unpaid** contractual arrangements with service providers for the provision of online content services. However, consumers that are temporarily present in another Member State of the Union often cannot access and use the online content services that they have acquired the right to use in their **Member State of residence , which is against the objective of the Single Market and smooth, efficient development of the EU Digital economy**.

**Amendment 5**

**Proposal for a regulation**

**Recital 4**

*Text proposed by the Commission*

(4) There are a number of barriers which hinder the provision of these services to consumers temporarily present

*Amendment*

(4) There are a number of barriers which hinder the provision of these services to consumers temporarily present

in another Member State. Certain online services include content such as music, games or films which are protected by copyright and/or related rights under Union law. In particular, the obstacles to cross-border portability of online content services stem from the fact that the rights for the transmission of content protected by copyright and/or related rights such as audiovisual works are often licensed on a territorial basis as well as from the fact that online service providers may choose to serve specific markets only.

in another Member State. Certain online services include content such as music, games, *entertainment programmes* or films which are protected by copyright and/or related rights under Union law. In particular, the obstacles to cross-border portability of online content services stem from the fact that the rights for the transmission of content protected by copyright and/or related rights such as audiovisual works are often licensed on a territorial basis as well as from the fact that online service providers may choose to serve specific markets only.

## Amendment 6

### Proposal for a regulation Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) The provision of online content services for consumers temporarily present in another Member State should not be hampered by the lack of infrastructure, which could create artificial barriers, particularly for small or isolated communities.***

***In this context, the commitment given by the Member States to achieve the targets for minimum download speeds of 30 Mbps for all by 2020 is crucial in order to meet the conditions relating to high connectivity for all.***

***In order to achieve this goal and due to the fact that rapidly growing wireless broadband traffic makes enhanced wireless network capacity a necessity, it will be of the outmost importance to achieve a stronger pan European approach for spectrum management across the Union.***

## Amendment 7

### Proposal for a regulation

#### Recital 12

*Text proposed by the Commission*

(12) Therefore, the objective of this Regulation is to adapt the legal framework in order to ensure that the licensing of rights no longer presents barriers to cross-border portability of online content services in the Union and that the cross-border portability can be ensured.

*Amendment*

(12) Therefore, ***one of the objectives of the Digital Single Market Strategy and the*** objective of this Regulation is to adapt the legal framework in order to ensure that the licensing of rights no longer presents barriers to cross-border portability of online content services in the Union and that cross-border portability can be ensured ***without additional costs.***

## Amendment 8

### Proposal for a regulation

#### Recital 13

*Text proposed by the Commission*

(13) This Regulation should, therefore, apply to online content services that a service provider, after having obtained the relevant rights from right holders in a given territory, provides to its subscribers on the basis of a contract, by any means including streaming, downloading or any other technique which allows use of that content. A registration to receive content alerts or a mere acceptance of HTML cookies should not be regarded as a contract for the provision of online content service for the purposes of this Regulation.

*Amendment*

(13) This Regulation should, therefore, apply to online content services that a service provider, after having obtained the relevant rights from right holders in a given territory, provides to its subscribers on the basis of a contract, by any means including streaming, ***applications,*** downloading or any other technique which allows use of that content. A registration to receive content alerts or a mere acceptance of HTML cookies should not be regarded as a contract for the provision of online content service for the purposes of this Regulation. ***Online content services provided on the basis of pan-European licences under Directive 2014/26/EU shall also be excluded from the scope of this Regulation.***

## Amendment 9

### Proposal for a regulation

#### Recital 15



*Text proposed by the Commission*

(15) This Regulation should apply only to online content services which subscribers can effectively access and use in the Member State in which they habitually reside without being limited to a specific location, as it is not appropriate to require service providers that **do not** offer portable services in **their home country** to do so across borders.

*Amendment*

(15) This Regulation should apply only to online content services which subscribers can effectively access and use in the Member State in which they habitually reside without being limited to a specific location, as it is not appropriate to require service providers that **are not able to** offer portable services in **the subscriber's Member State of residence** to do so across borders. **Nevertheless, in order for this Regulation to have a meaningful and practical impact on the life of end-users, it is important that rights holders are increasingly encouraged to allow service providers to offer portable services at national level.**

**Amendment 10**

**Proposal for a regulation**  
**Recital 16**

*Text proposed by the Commission*

(16) This Regulation should apply to online content services which are provided against payment of money. Providers of such services are in a position to verify the Member State of residence of their subscribers. The right to use an online content service should be regarded as acquired against payment of money whether such payment is made directly to the provider of the online content service, or to another party such as a provider offering a package combining a telecommunications service and an online content service operated by another provider.

*Amendment*

(16) This Regulation should apply to online content services which are provided against payment of money. Providers of such services are in a position to verify the Member State of residence of their subscribers. The right to use an online content service should be regarded as acquired against payment of money whether such payment is made directly to the provider of the online content service, or to another party such as a provider offering a package combining a telecommunications service and an online content service operated by another provider. **The payment of fees, in particular television or other broadcasting licence fees, should not be regarded as payment of money for the purposes of this Regulation.**

## Amendment 11

### Proposal for a regulation

#### Recital 17

*Text proposed by the Commission*

(17) Online content services which are provided without payment of money ***are also*** included in the scope of this Regulation ***to the extent that providers verify the Member State of residence of their subscribers. Online content services which are provided without the payment of money and whose providers do not verify the Member State of residence of their subscribers should be outside the scope of this Regulation as their inclusion would involve a major change to the way these services are delivered and involve disproportionate costs. As concerns verification of the subscriber's Member State of residence, information such as a payment of a licence fee for other services provided in the Member State of residence, the existence of a contract for internet or telephone connection, IP address or other means of authentication, should be relied upon, if they enable the provider to have reasonable indicators as to the Member State of residence of its subscribers.***

## Amendment 12

### Proposal for a regulation

#### Recital 18

*Text proposed by the Commission*

(18) In order to ensure the cross-border portability of online content services it is necessary to require that online service providers enable their subscribers to use the service in the Member State of their temporary presence by providing them access to the same content on the same range and number of devices, for the same

*Amendment*

(17) Online content services which are provided without payment of money ***or with the payment of a mandatory fee such as a broadcasting fee will have the option to be*** included in the scope of this Regulation ***if the providers so decide, and provided that they comply with the requirements on the verification of the Member State of residence set out in this Regulation, in the same way as providers of online content services which are provided against payment of money. If they so decide, they should inform subscribers and the holders of copyright and related rights of their decision to exercise that option.***

*Amendment*

(18) In order to ensure the cross-border portability of online content services it is necessary to require that online service providers enable their subscribers to use the service in the Member State of their temporary presence by providing them with access to the same content on the same range and number of devices, for the

number of users and with the same range of functionalities as those offered in their Member State of residence. This obligation is mandatory and therefore the parties may not exclude it, derogate from it or vary its effect. Any action by a service provider which would prevent the subscriber from accessing or using the service while temporarily present in a Member State, for example restrictions to the functionalities of the service or to the quality of its delivery, would amount to a circumvention of the obligation to enable cross-border portability of online content services and therefore would be contrary to this Regulation.

same number of users and with the same range of functionalities as those offered in their Member State of residence ***without prejudice to the possibility to access the local version of the content available in the Member State of temporary presence.*** This obligation is mandatory and therefore parties may not exclude it, derogate from it or vary its effect, ***either by contract or unilaterally by the service provider.*** Any action by a service provider ***or a right holder*** which would prevent the subscriber from accessing or using the service while temporarily present in a Member State ***other than the Member State of residence,*** for example restrictions to the functionalities of the service or to the quality of its delivery, would amount to a circumvention of the obligation to enable cross-border portability of online content services and therefore would be contrary to this Regulation.

## Amendment 13

### Proposal for a regulation Recital 19

#### *Text proposed by the Commission*

(19) Requiring that the delivery of online content services to subscribers temporarily present in Member States other than their Member State of residence be of the same quality as in the Member State of residence could result in high costs for service providers and thus ultimately for subscribers. Therefore, it is not appropriate for this Regulation to require that the provider of an online content service take measures to ensure quality of delivery of such services beyond the quality available via the local online access chosen by a subscriber while temporarily present in another Member State. In such cases the provider shall not be liable if the quality of delivery of the service is lower. Nevertheless, if the provider expressly

#### *Amendment*

(19) Requiring that the delivery of online content services to subscribers temporarily present in Member States other than their Member State of residence be of the same quality as in the Member State of residence could result in high costs for service providers and thus ultimately for subscribers. Therefore, it is not appropriate for this Regulation to require that the provider of an online content service take measures to ensure quality of delivery of such services beyond the quality available via the local online access chosen by a subscriber while temporarily present in another Member State. In such cases the provider shall not be liable if the quality of delivery of the service is lower ***provided that the quality loss can be clearly***

agrees to guarantee certain quality of delivery to subscribers while temporarily present in other Member States, the provider shall be bound by such agreement.

*attributed to objective reasons such as the poor performance of the local network infrastructure.* Nevertheless, if the provider expressly agrees to guarantee certain quality of delivery to subscribers while temporarily present in other Member States, the provider shall be bound by such agreement, *without being able to charge more for it or by imposing any additional administrative burden on the subscriber. The competent market surveillance authority should regularly monitor the pertinence of the justifications given by providers for a lower quality of delivery.*

## Amendment 14

### Proposal for a regulation Recital 20

#### *Text proposed by the Commission*

(20) In order to ensure that providers of online content services comply with the obligation to provide cross-border portability of their services without acquiring the relevant rights in another Member State, it is necessary to stipulate that those service providers which lawfully provide portable online content services in the Member State of residence of subscribers are always entitled to provide such services to those subscribers when they are temporarily present in another Member State. This should be achieved by establishing that the provision, the access to and the use of such online content service should be deemed to occur in the Member State of the subscriber's residence.

#### *Amendment*

(20) In order to ensure that providers of online content services comply with the obligation to provide cross-border portability of their services without acquiring the relevant rights in another Member State, it is necessary to stipulate that those service providers which lawfully provide portable online content services in the Member State of residence of subscribers are always entitled to provide such services to those subscribers when they are temporarily present in another Member State. This should be achieved by establishing that the provision, the access to and the use of such online content service should be deemed to occur in the Member State of the subscriber's residence. ***This Regulation does not prevent a provider from offering its subscriber, who is temporarily present in another Member State, an online content service that the provider lawfully provides in that Member State.***

## Amendment 15

### Proposal for a regulation

#### Recital 21

##### *Text proposed by the Commission*

(21) For the licensing of copyright and related rights, this means that relevant acts of reproduction, communication to the public and making available of works and other protected subject-matter, as well as the acts of extraction or re-utilization in relation to databases protected by sui generis rights, which occur when the service is provided to subscribers when they are temporarily present in a Member State other than their Member State of residence, should be deemed to occur in the subscribers' Member State of residence. The service providers, therefore, should be deemed to carry out such acts on the basis of the respective authorisations from the right holders concerned for the Member State of residence of these subscribers. Whenever service providers can carry out acts of communication to the public or reproduction in the Member State of the subscriber on the basis of an authorisation from the right holders concerned, a subscriber who is temporarily present in a Member State other than his Member State of residence should be able to access and use the service and where necessary carry out any relevant acts of reproduction such as downloading which he would be entitled to do in his own Member State of residence. The provision of an online content service by a service provider to a subscriber temporarily present in a Member State other than his or her Member State of residence and the use of the service by such a subscriber in accordance with this Regulation should not constitute a breach of copyright and related rights or any other rights relevant for the use of the content in the service.

##### *Amendment*

(21) For the licensing of copyright and related rights, this means that relevant acts of reproduction, communication to the public and making available of works and other protected subject-matter, as well as the acts of extraction or re-utilization in relation to databases protected by sui generis rights, which occur when the service is provided to subscribers when they are temporarily present in a Member State other than their Member State of residence, should be deemed to occur in the subscribers' Member State of residence. The service providers, therefore, should be deemed to carry out such acts on the basis of the respective authorisations from the right holders concerned for the Member State of residence of these subscribers. Whenever service providers can carry out acts of communication to the public or reproduction in the Member State of the subscriber on the basis of an authorisation from the right holders concerned, a subscriber who is temporarily present in a Member State other than his Member State of residence should be able to access and use the service and where necessary carry out any relevant acts of reproduction such as downloading which he would be entitled to do in his own Member State of residence. The provision of an online content service by a service provider to a subscriber temporarily present in a Member State other than his or her Member State of residence and the use of the service by such a subscriber in accordance with this Regulation should not constitute a breach of copyright and related rights or any other rights relevant for the use of the content in the service. ***The right to cross-border access to online digital content acquired in the Member State of***

*residence is limited exclusively to personal use.*

## Amendment 16

### Proposal for a regulation

#### Recital 22

*Text proposed by the Commission*

(22) Service providers should not be liable for breach of any contractual provisions contrary to the obligation to enable their subscribers to use the service in the Member State of their temporary presence. Therefore clauses in contracts designed to prohibit or limit the cross-border portability of online content services should be unenforceable.

*Amendment*

(22) Service providers should not be liable for breach of any contractual provisions contrary to the obligation to enable their subscribers to use the service in the Member State of their temporary presence. Therefore clauses in contracts designed to prohibit or limit the cross-border portability of online content services should be unenforceable. ***The service providers and holders of rights relevant for the provision of online content services should not be allowed to circumvent the application of this Regulation by virtue of the choice of law of a non-member country as the law applicable to contracts signed between them or to contracts between providers and subscribers.***

## Amendment 17

### Proposal for a regulation

#### Recital 23

*Text proposed by the Commission*

(23) Service providers should ensure that their subscribers are properly informed about the conditions of enjoyment of online content services in Member States other than the Member State of residence of the subscribers. The Regulation enables right holders to require that the service provider make use of effective means in order to verify that the online content service is provided in conformity with this Regulation. It is necessary, however, to

*Amendment*

(23) Service providers should ensure that, ***as far as possible***, their subscribers are properly informed about the conditions ***and the extent*** of enjoyment of online content services in Member States other than the Member State of residence of the subscribers. The Regulation ***requires*** that the service provider make use of effective means in order to verify that the online content service is provided in conformity with this Regulation. It is necessary,

ensure that the required means **are reasonable** and do not go beyond what is necessary in order to achieve this purpose. Examples of the necessary technical and organisational measures **may include sampling of IP address** instead of constant monitoring of location, transparent information to the individuals about the methods used for the verification and its purposes, and appropriate security measures. Considering that for purposes of the verification what matters is not the location, but rather, in which Member State the subscriber is accessing the service, precise location data should not be collected and processed for this purpose. Similarly, where authentication of a subscriber is sufficient in order to deliver the service provided, identification of the subscriber should not be required.

however, to ensure that the required means **leave room for service providers to innovate**, are reasonable, **non-intrusive, respectful of the privacy rights** and do not go beyond what is necessary in order to achieve this purpose. Examples of the necessary technical and organisational measures **should be based on electronic means of identification at the time of the subscription** instead of constant monitoring of location, on transparent information to the individuals about the methods used for the verification and its purposes, and appropriate security measures. Considering that for purposes of the verification what matters is not the location, but rather, in which Member State the subscriber is accessing the service, precise location data should not be collected and processed for this purpose. Similarly, where authentication of a subscriber is sufficient in order to deliver the service provided, identification of the subscriber should not be required. **The verification process should be carried out simply and non-cumulatively so as to ensure privacy and data protection, using as far as possible information already lawfully available to the provider, and the lightest and simplest methods available.**

## Amendment 18

### Proposal for a regulation Recital 23 a (new)

*Text proposed by the Commission*

*Amendment*

**(23a) For the purposes of this Regulation, consumers may not state that they are habitually resident in more than one Member State.**

## Amendment 19

### Proposal for a regulation Recital 24

(24) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles, in particular the right to respect for private and family life, the right to protection of personal data, the freedom of expression and the freedom to conduct a business. Any processing of personal data under this Regulation should respect fundamental rights, including the right to respect for private and family life **and** the right to protection of personal data under Articles 7 **and** 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with **Directives 95/46/EC**<sup>27</sup> and 2002/58/EC<sup>28</sup>. In particular, service providers must ensure that any processing of personal data under this Regulation must be necessary and proportionate in order to achieve the relevant purpose.

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<sup>27</sup>**Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data OJ L 281, 23.11.1995, p. 31–50.**

<sup>28</sup> 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) (OJ L 201, 31.07.2002, p 37), called, as amended by Directives 2006/24/EC and 2009/136/EC, the "e-

(24) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles, in particular the right to respect for private and family life, the right to protection of personal data, the freedom of expression and the freedom to conduct a business. Any processing of personal data under this Regulation should respect fundamental rights, including the right to respect for private and family life, the right to protection of personal data **and the right to intellectual property** under Articles 7, 8 **and 17** of the Charter of Fundamental Rights of the European Union and must be in compliance with **Regulation (EU) 2016/679**<sup>27</sup> **and Directive 2002/58/EC**<sup>28</sup>. In particular, service providers must ensure that any processing of personal data under this Regulation must be necessary and proportionate in order to achieve the relevant purpose.

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<sup>27</sup> **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 (OJ L 119, 4.5.2016, p. 1) .**

<sup>28</sup> 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) (OJ L 201, 31.07.2002, p 37), called, as amended by Directives 2006/24/EC and 2009/136/EC, the "e-



Privacy Directive".

Privacy Directive".

## Amendment 20

### Proposal for a regulation

#### Recital 25

##### *Text proposed by the Commission*

(25) This Regulation should not affect the application of the rules of competition, and in particular Articles 101 and 102 of the Treaty. The rules provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty.

##### *Amendment*

(25) This Regulation should not affect the application of the rules of competition, and in particular Articles 101 and 102 of the Treaty. The rules provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty. ***Nor should this Regulation apply to online content services for which pan-European licences already exist under Directive 2014/26/EU.***

## Amendment 21

### Proposal for a regulation

#### Recital 26

##### *Text proposed by the Commission*

(26) Contracts under which content is licensed are usually concluded for a relatively long duration. Consequently, and in order to ensure that all consumers residing in the Union can enjoy the cross-border portability feature of online content services on an equal basis in time and without any undue delay, this Regulation should also apply to contracts concluded and rights acquired before the date of its application if they are relevant for the cross-border portability of an online content service provided after that date. This is also necessary in order to ensure a level playing field for service providers operating in the internal market, by enabling providers who concluded contracts with right holders for a long duration to offer cross-border portability to their subscribers, independently of the provider's possibility to renegotiate such

##### *Amendment*

(26) Contracts under which content is licensed are usually concluded for a relatively long duration. Consequently, and in order to ensure that all consumers residing in the Union can enjoy the cross-border portability feature of online content services on an equal basis in time and without any undue delay, this Regulation should also apply to contracts concluded and rights acquired before the date of its application if they are relevant for the cross-border portability of an online content service provided after that date ***without involving any additional costs.*** This is also necessary in order to ensure a level playing field for service providers operating in the internal market, ***particularly for SMEs,*** by enabling providers who concluded contracts with right holders for a long duration to offer cross-border portability to their

contracts. Moreover, this provision should ensure that when service providers make arrangements necessary for the cross-border portability of their services, they will be able to offer such portability with regard to the entirety of their online content. Finally, it should also allow right holders not having to renegotiate their existing licensing contracts in order to enable the offering of the cross-border portability of services by providers.

subscribers, independently of the provider's possibility to renegotiate such contracts. Moreover, this provision should ensure that when service providers make arrangements necessary for the cross-border portability of their services, they will be able to offer such portability with regard to the entirety of their online content. Finally, it should also allow right holders not having to renegotiate their existing licensing contracts in order to enable the offering of the cross-border portability of services by providers.

## **Amendment 22**

### **Proposal for a regulation**

#### **Recital 29**

##### *Text proposed by the Commission*

(29) Since the objective of this Regulation, namely the adaptation of the legal framework so that cross-border portability of online content services is provided in the Union, cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objective. Therefore, this Regulation does not substantially affect the way the rights are licensed and does not oblige right holders and service providers to renegotiate contracts. Moreover, this Regulation does not require that the provider takes measures to ensure the quality of delivery of online content services outside the Member State of residence of the subscriber. Finally, this Regulation does not apply to service providers who offer services without

##### *Amendment*

(29) Since the objective of this Regulation, namely the adaptation of the legal framework so that cross-border portability of online content services is provided in the Union, cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objective. Therefore, this Regulation does not substantially affect the way the rights are licensed and does not oblige right holders and service providers to renegotiate contracts. Moreover, this Regulation does not require that the provider takes measures to ensure the quality of delivery of online content services outside the Member State of residence of the subscriber. Finally, this Regulation does not apply to service providers who offer services without

payment of money and who do not verify the subscriber's Member State of residence. Therefore, it does not impose any disproportionate costs,

payment of money and who do not verify the subscriber's Member State of residence. Therefore, it does not impose any disproportionate costs ***to online content service providers, right holders or end-users***

## Amendment 23

### Proposal for a regulation Article 1 – paragraph 1

#### *Text proposed by the Commission*

This Regulation introduces a common approach to ensuring that subscribers to online content services in the Union, when temporarily present in a Member State, can access and use these services.

#### *Amendment*

This Regulation introduces a common approach to ensuring that subscribers to online content services in the Union, when temporarily present in a Member State ***other than the Member State of residence, can access and use these services, without additional costs, in the same manner as when they are present in their Member State of residence.***

## Amendment 24

### Proposal for a regulation Article 2 – paragraph 1 – point a

#### *Text proposed by the Commission*

(a) "Subscriber" means any consumer who, on the basis of a contract for the provision of an online content service with a provider, may access and use such service in the Member State of residence;

#### *Amendment*

(a) "Subscriber" means any consumer who, on the basis of a contract for the provision of an online content service with a provider, may access and use such service in the Member State of residence, ***against payment of money or without such payment, if the service provider concerned voluntarily decides to comply with the requirements in relation to verifying the Member State of residence;***

## Amendment 25

### Proposal for a regulation Article 2 – paragraph 1 – point c

*Text proposed by the Commission*

*Amendment*

(c) "Member State of residence" means the Member State where the subscriber is habitually residing;

(c) "Member State of residence" means the Member State where the subscriber habitually resides, ***as determined and previously verified during the subscription process***;

**Amendment 26**

**Proposal for a regulation**

**Article 2 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) "Temporarily present" means a presence of a subscriber in a Member State other than the Member State of residence;

(d) "Temporarily present" means a ***non-permanent*** presence of a subscriber in a Member State other than the Member State of residence ***whatever the effective duration of such limited presence, provided that the Member State of residence was verified in accordance with Article 2, paragraph 2***;

**Amendment 27**

**Proposal for a regulation**

**Article 2 – paragraph 1 – point e – subparagraph 2 – point 2**

*Text proposed by the Commission*

*Amendment*

(2) without payment of money provided that the subscriber's Member State of residence is verified by the provider;

(2) without payment of money provided that the subscriber's Member State of residence is ***effectively*** verified by the provider ***based on online declaration by the subscriber on their Member State of residence, on the basis of the subscriber's place of residence for tax purposes, identity card, electronic identification means, in particular notified eIDs in accordance with Regulation (EU) n° 910/2014 or other online document confirming the subscriber's residence***;

## Amendment 28

### Proposal for a regulation Article 3 – paragraph 1

*Text proposed by the Commission*

(1) The provider of an online content service shall enable a subscriber who is temporarily present in a Member State to access and use the online content service.

*Amendment*

(1) The provider of an online content service ***subject to payment or without payment of money but subject to prior and proportionate verification of the subscriber's Member State of residence*** shall enable a subscriber who is temporarily present in a Member State to access and use the online content service, ***for which the user has a legal subscription, without additional costs.***

## Amendment 29

### Proposal for a regulation Article 3 – paragraph 3

*Text proposed by the Commission*

(3) The provider of an online content service shall ***inform*** the subscriber ***of*** the quality of delivery of the online content service provided in accordance with paragraph 1.

*Amendment*

(3) The provider of an online content service shall ***provide*** the subscriber ***with information concerning*** the quality of delivery of the online content service provided ***and its possible limitations***, in accordance with paragraph 1, ***prior to providing that service.***

## Amendment 30

### Proposal for a regulation Article 5 – paragraph 1

*Text proposed by the Commission*

(1) Any contractual provisions including those between holders of copyright and related rights, those holding any other rights relevant for the use of content in online content services and service providers, as well as between service providers and subscribers which

*Amendment*

(1) Any contractual provisions including those between holders of copyright and related rights, those holding any other rights relevant for the use of content in online content services and service providers, as well as ***those*** between service providers and subscribers which

*are contrary to Articles 3(1) and 4 shall be unenforceable.*

*may have the effect of preventing the application of this Regulation, shall be unenforceable.*

### **Amendment 31**

#### **Proposal for a regulation Article 5 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**(2) Notwithstanding paragraph 1, holders of copyright and related rights or those holding any other rights in the content of online content services may require that the service provider make use of effective means in order to verify that the online content service is provided in conformity with Article 3(1), provided that the required means are reasonable and do not go beyond what is necessary in order to achieve their purpose.**

**deleted**

### **Amendment 32**

#### **Proposal for a regulation Article 6 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

The processing of personal data carried out within the framework of this Regulation **including, in particular, for purposes of verification under Article 5(2)**, shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.

The processing of personal data carried out within the framework of this Regulation shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.

### **Amendment 33**

#### **Proposal for a regulation Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 7a**

***Principle of technology neutrality***

***Consumers shall have the freedom to choose the type of device or technology from those available on the market in order to access online content, and to change freely between them. The provision of portable services should not be conditioned by additional technical requirements and shall be done under technologically neutral and interoperable hardware and software environment;***

**Amendment 34**

**Proposal for a regulation  
Article 7 b (new)**

*Text proposed by the Commission*

*Amendment*

***Article 7b***

***Evaluation***

***No later than three years after the entry into force of this Regulation, the Commission shall evaluate its implementation and submit a report setting out its conclusions to the European Parliament and the Council.***

***The report shall include an assessment of the use made of cross-border portability and of verification means, pay particular attention to whether the solutions created and implemented have a positive or a negative impact on the development of the Digital Single Market and, if necessary, shall assess the need for a review. The Commission report shall be accompanied, if necessary, by a legislative proposal.***

**Amendment 35**

**Proposal for a regulation  
Article 8 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

It shall apply from [date: **6** months following the day of its publication].

*Amendment*

It shall apply from [date: **12** months following the day of its publication], ***which does not preclude service providers from ensuring portability as soon as they are able to do so pursuant to this Regulation.***



PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Cross-border portability of online content services in the internal market
<b>References</b>	COM(2015)0627 – C8-0392/2015 – 2015/0284(COD)
<b>Committee responsible</b> Date announced in plenary	JURI 12.5.2016
<b>Opinion by</b> Date announced in plenary	ITRE 25.2.2016
<b>Rapporteur</b> Date appointed	Carlos Zorrinho 1.3.2016
<b>Discussed in committee</b>	4.7.2016
<b>Date adopted</b>	26.9.2016
<b>Result of final vote</b>	+: 48 –: 1 0: 0
<b>Members present for the final vote</b>	Bendt Bendtsen, Xabier Benito Ziluaga, José Blanco López, David Borrelli, Jerzy Buzek, Angelo Ciocca, Pilar del Castillo Vera, Christian Ehler, András Gyürk, Hans-Olaf Henkel, Eva Kaili, Kaja Kallas, Barbara Kappel, Krišjānis Kariņš, Miapetra Kumpula-Natri, Janusz Lewandowski, Ernest Maragall, Edouard Martin, Angelika Mlinar, Dan Nica, Angelika Niebler, Morten Helveg Petersen, Miroslav Poche, Carolina Punset, Michel Reimon, Paul Rübig, Sergei Stanishev, Neoklis Sylikiotis, Patrizia Toia, Evžen Tošenovský, Vladimir Urutchev, Adina-Ioana Vălean, Henna Virkkunen, Martina Werner, Lieve Wierinck, Anna Záborská, Flavio Zanonato, Carlos Zorrinho
<b>Substitutes present for the final vote</b>	Michał Boni, Soledad Cabezón Ruiz, David Coburn, Cornelia Ernst, Eugen Freund, Françoise Grossetête, Massimiliano Salini, Maria Spyrali
<b>Substitutes under Rule 200(2) present for the final vote</b>	Isabella Adinolfi, Andor Deli, Salvatore Domenico Pogliese