



2015/0284(COD)

30.9.2016

OPINION

of the Committee on the Internal Market and Consumer Protection

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 (*): Marco Zullo

(*) Associated committee – Rule 54 of the Rules of Procedure.

PA_Legam

SHORT JUSTIFICATION

The Commission proposal establishes an obligation for providers of online content to ensure portability for consumers, enabling them to take with them, when moving around within the EU, any digital content which they have lawfully purchased in their Member State of residence. The regulation provides for a 'legal fiction', which enables this to be done without it constituting an infringement of existing rights.

For the IMCO Committee, any proposals which strengthen the internal market and remove unjustified barriers are vital.

It is, however, necessary to take into account the financial sustainability of the European audiovisual industry, whose diversity of cultural activities should be safeguarded, the protection afforded to copyright and other related rights, and the underlying principle of territoriality.

Your rapporteur therefore considers it important for portability not to jeopardise these prerequisites by becoming a form of European cross-border access.

Scope

The Commission stipulates that the regulation should apply to providers who offer access to subscribers against payment of money.

Your rapporteur agrees with this approach and welcomes the exclusion from the scope of the regulation of providers of content for which no payment of money is required. The fact that the service is free, indeed, appears to be insufficient to warrant the obligation to verify residence and thus to meet the requirements for applying the 'legal fiction'.

Your rapporteur also considers it helpful to clarify that the payment of a mandatory fee, which is charged in some countries for radio and TV services, should not be regarded as a contract for the purposes of this regulation.

Definitions

Your rapporteur considers it necessary to define more clearly the concept of 'Member State of residence', in order to leave no room for legal uncertainty.

He takes the view that the regulation should encompass criteria that are sufficient for determining residence unequivocally, for the purpose of implementing portability.

He also believes that the determination of a Member State of residence should be unambiguous and thus prevent an individual from claiming residence in more than one Member State.

The Commission takes the view that the stay in a Member State other than that of residence should not be limited to a specific number of days. Your rapporteur shares this view, because otherwise those categories of citizen to whom the directive is primarily addressed would be adversely affected. The provision of clear criteria for determining residence is sufficient for preventing misuse and avoidance of the legislation.

Your rapporteur therefore believes it is useful to specify that the stay in a different Member State may take place for purposes of leisure, work (such as cross-border workers) or study (such as Erasmus students).

In order to avoid excessive control and a violation of privacy, your rapporteur agrees that constant monitoring of users' locations should not be permitted.

Verification of residence

A prerequisite for the proper functioning of portability is to determine clearly the user's habitual residence, otherwise the system would be open to abuse and to opportunities to circumvent existing copyright law.

In order to have a set of clear and effective instruments, your rapporteur proposes several criteria for determining residence. He also proposes that the Commission identify a more exhaustive list through delegated acts and following consultations with representatives of consumers and industry. The verification means and instruments must be effective but proportionate to their aim, so as not to collect information that is not strictly necessary for the purpose, and they should not place an excessive burden on users.

Verification of residence will take place at the time of subscription to the service, but also subsequently, to check there have been no changes, and on an ongoing, but not constant, basis, to avoid the risk of excessively invasive monitoring.

Option for free services

Those who provide services without requesting the payment of money should be excluded from the scope of this legislation.

However, your rapporteur takes the view that they should have the option, should they request it, of being included in the scope of the regulation, and thus of being able to provide their users with portability, by using the 'legal fiction' provided for.

In this case, they should apply all the provisions of the regulation and prepare a system to verify the residence of the user with the same clarity and certainty as that required of providers who are paid money. This is a fundamental requirement in order to prevent the occurrence of abuse and financial damage to digital content right holders.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(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.

Amendment

(1) *Guaranteeing seamless access to online content services for consumers throughout the European Union based on subscriptions contracted in the Member State of residence is an important element for the completion of the Single Market and the effective enforcement of the principles of free movement of persons and services and therefore for the development of a European identity and citizenship. Consumers should be able to* 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 *for purposes such as business or leisure travel, or periods of study*. Therefore, barriers that hamper access and use of such online content services cross border *in such cases* should be eliminated.

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) The *technological* development leading to a proliferation of portable

Amendment

(2) The development *of technology and innovative services* leading to a

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.

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, *for the benefit of consumers in the internal market*.

Amendment 3

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 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 *continue accessing* and *using* the online content services that they have acquired the right to use in their *Member State of residence, which limits the right to access online services and is potentially prejudicial*.

Amendment 4

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 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-

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.

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. ***Nonetheless, territorial licences play a key role in the financing and production of cultural content adapted to suit the different markets in the Union, especially in the audiovisual and film sphere, making a decisive contribution to European cultural diversity.***

Amendment 5

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) Therefore, increasingly, online content services are marketed in a package in which content which is not protected by copyright and/or related rights is not separable from content which is protected by copyright and/or related rights without substantially lessening the value of the service provided to consumers. This is especially the case with premium content such as sporting or other events of significant interest to consumers. In order to enable service providers to deliver to consumers full access to their online content services, it is indispensable that this Regulation also covers such content used by online content services and therefore that it applies to audiovisual media services in the meaning of Directive 2010/13/EU as well as to transmissions of broadcasting organisations in their entirety.

Amendment

(6) Therefore, increasingly, online content services are marketed in a package in which content which is not protected by copyright and/or related rights is not separable from content which is protected by copyright and/or related rights without substantially lessening the value of the service provided to consumers. This is especially the case with premium content such as sporting or other events of significant interest to consumers. In order to enable service providers to deliver to consumers full access to their online content services ***during the temporary presence of the consumer in a Member State other than the Member State of residence***, it is indispensable that this Regulation also covers such content used by online content services and therefore that it applies to audiovisual media services in the meaning of Directive 2010/13/EU as well as to transmissions of broadcasting organisations in their entirety.

Amendment 6

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, the objective of this Regulation is to adapt the legal framework ***on the basis of a robust mechanism*** 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 ***without additional cost to the subscriber. Cross-border portability should be clearly distinguished from open cross-border access.***

Amendment 7

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) In order to avoid both inconsistency with the current rules in the field of taxation and disproportionate administrative burdens, this Regulation should not affect the application of any provision related to taxation.

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

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, 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.

basis of a contract, by any means including streaming, downloading or any other technique which allows use of that content **online**. 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 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 **their** Member State **of residence** without being limited to a specific location, as it is not appropriate to require service providers that do not offer portable services **within the Member State of residence of the subscriber** to do so across borders.

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

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.

provider. *The payment of a universal mandatory fee such as a broadcasting license fee should not be regarded as a payment of money to receive an online content service.*

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

(17) ***Providers of*** online content services which are provided without payment of money ***should have the option to be*** 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. ***In order for these providers to exercise that option, they must comply with the same obligations as those that are provided for by this Regulation for the providers of online content services which are provided against payment of money. Furthermore, they should inform subscribers, the relevant holders of copyright and related rights and those holding any other rights in the content of online content service of their decision to exercise that option. Such information might be provided on the provider's website.***

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 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.

Amendment

(18) In order **to comply with the obligation, set out in paragraph 1 of Article 3**, to ensure the cross-border portability of online content services, it is necessary to require online service providers **to** 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 same 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 **cannot** exclude it, **limit 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 **other than the Member State of residence**, for example restrictions **on** the functionalities of the service or **on** 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**

Amendment

(19) **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 subscriber.** 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

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

quality as in the Member State of residence could result in high costs for service providers and thus ultimately for subscribers. Therefore, *although* this Regulation *does not impose disproportionate requirements to guarantee the same* 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, *providers of online content services should provide subscribers advance notification concerning any potential variation in the quality that may be delivered or experienced when accessing content in a Member State other than the Member State of residence. Such information could be provided on the provider's website.* In such cases the provider shall not be liable if the quality of delivery of the service is lower *where the reasons for this are attributable to objective issues, such as the inadequacy of national infrastructure.* Moreover, 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.

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

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.

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, and in particular the legal mechanism localising the provision of, the access to and the use of an online content service in the Member State of residence of the subscriber, does not prevent a service provider from offering a subscriber who is temporarily present in another Member State an online content service that the provider provides in that other Member State.

Amendment 15

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) Providers ***of online content services*** should not be liable for breach of any contractual provisions that ***run counter*** to the obligation to enable their subscribers to use the service in the Member State of their temporary presence. Therefore clauses in contracts ***which are*** designed to prohibit or limit the portability of ***such*** online content services ***across the Union*** should be unenforceable. ***Providers of online content services and holders of rights relevant for the provision of those services should not be allowed to circumvent the application of this Regulation by choosing the law of a third country to be the law which is to apply to contracts between them or to contracts between providers and subscribers.***

Amendment 16

Proposal for a regulation

Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) Member State of residence implies that the subscriber has actual and stable residence in the Member State to which he or she returns regularly. For the purposes of this Regulation, a subscriber has only one Member State of residence. Service providers of online content should consider that the Member State of residence, verified and authenticated by the said provider pursuant to this Regulation, is the sole Member State of residence. Providers should not be obliged to verify whether their subscribers are also subscribers to an online content service in another Member State.

Amendment 17

Proposal for a regulation

Recital 23

Text proposed by the Commission

Amendment

(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 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

(23) ***It is essential that*** service providers 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 ***requires*** the service provider ***to*** 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 ensure that the required means ***of verification*** are reasonable, ***unintrusive, proportionate,*** and do not go beyond what is ***strictly*** necessary in order to achieve this purpose. ***Those means should also not constitute an excessive burden for subscribers. It is for the service provider to decide which verification means to apply on the basis of the list set out in***

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.

Article 3b. Examples of the necessary technical and organisational measures may include 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 ***specific*** location ***or the specific Member State***, but rather, ***whether access of the content is within the*** Member State ***of residence or not***, 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 service provider should not track the precise location of a subscriber in a Member State by means of Internet Protocol (IP) sampling or by other means of geolocation.***

Amendment 18

Proposal for a regulation Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) The subscriber should be able to access the information on the Member State of residence verified and registered at the time of subscription.

Amendment 19

Proposal for a regulation Recital 23 b (new)

Text proposed by the Commission

Amendment

(23b) For the purposes of this Regulation, a consumer cannot claim his or her habitual residence in more than

one Member State.

Amendment 20

Proposal for a regulation Recital 23 c (new)

Text proposed by the Commission

Amendment

(23c) A provider who has established the Member State of residence in accordance with this Regulation should be able to assume, for the purposes of this Regulation, that the verified Member State of residence is the only Member State of residence of the subscriber.

Amendment 21

Proposal for a regulation Recital 23 d (new)

Text proposed by the Commission

Amendment

(23d) In order to take due account of technological developments and, in particular, the needs of industry and consumers, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendment of the list of means for the verification of the subscriber's Member State of residence. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making^{1a}. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of

Amendment 22

Proposal for a regulation Recital 24

Text proposed by the Commission

(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/EC²⁷ and 2002/58/EC²⁸. ***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.***

²⁷ 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.

²⁸ Directive 2002/58/EC of the European Parliament and of the Council of 12 July

Amendment

(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 right to property, including intellectual property,*** 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/EC²⁷ and 2002/58/EC²⁸ ..

²⁷ 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.

²⁸ 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".

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".

Amendment 23

Proposal for a regulation Article 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 **legal framework that ensures** that subscribers to online content services in the Union, when temporarily present in a Member State **other than that of their Member State of residence** can access and use these services, **and that respects all the relevant copyright and related rights of the content accessed and used. This access should be subject to effective prior verification of their Member State of residence.**

Amendment 24

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

Text proposed by the Commission

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

Amendment

(c) "Member State of residence" means the Member State where the subscriber **has his or her residence, as determined on the basis of Article 3b**;

Amendment 25

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

Text proposed by the Commission

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

Amendment

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

Amendment 26

Proposal for a regulation

Article 2 – paragraph 1 – point e

Text proposed by the Commission

(e) "Online content service" means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union that a service provider is lawfully providing online in the Member State of residence on a portable basis and which is an audiovisual media service within the meaning of Directive 2010/13/EU or a service the main feature of which is the provision of access to and use of works, other protected subject matter or transmissions of broadcasting organisations, whether in a linear or an on-demand manner,

which is provided to a subscriber on agreed terms ***either:***

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

Amendment

(e) "Online content service" means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union that a service provider is lawfully providing online in the Member State of residence on a portable basis and which is an audiovisual media service within the meaning of Directive 2010/13/EU or a service the main feature of which is the provision of access to and use of works, other protected subject matter or transmissions of broadcasting organisations, whether in a linear or an on-demand manner, which is provided to a subscriber on agreed terms;

Amendment 27

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 ***provided against payment of money*** shall enable a subscriber who is temporarily present in a Member State to access and use the online content service ***available in his or her Member State of residence***.

Amendment 28

Proposal for a regulation

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Paragraph 1 is without prejudice to the right of the provider to decide to enable a subscriber to additionally access the local repertoire that has been licenced to the service provider in the Member State where the subscriber is temporarily present.

Amendment 29

Proposal for a regulation

Article 3 – paragraph 3

Text proposed by the Commission

Amendment

(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.

(3) ***However***, the provider of an online content service shall, ***where possible on the basis of the data available to it, duly*** inform the subscriber, ***before the conclusion of the contract or, for contracts concluded before the date of application of this Regulation, in due time before that date, of any potential variation*** in the quality of delivery of the online content service provided in accordance with paragraph 1 ***and in the conditions of portability set out in accordance with this Regulation***.

Amendment 30

Proposal for a regulation Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Option to enable cross-border portability

1. The provider of an online content service provided without payment of money may choose to enable those of its subscribers who are temporarily present in a Member State to access and use the online content service on the condition that the provider verifies effectively the subscriber's Member State of residence in accordance with this Regulation.

2. The service provider shall inform subscribers, the relevant holders of copyright and related rights and those holding any other rights in the content of an online content service of its decision to provide the online content service in accordance with paragraph 1 prior to providing that service. When informing subscribers, service providers shall use means which are adequate and proportionate.

Amendment 31

Proposal for a regulation Article 3 b (new)

Text proposed by the Commission

Amendment

Article 3b

Means of verification of the Member State of residence

1. The provider of an online content service provided against payment of money shall use effective means in order to verify the Member State of residence of

its subscribers. In doing so, it shall use verification means which are proportionate and reasonable and which do not go beyond what is necessary to achieve the purpose of this Regulation. Those means shall not constitute an excessive burden for subscribers.

2. In order to comply with the obligation set out in paragraph 1 of this Article, the provider shall use the following verification means:

(a) the billing address or the postal address of the subscriber;

(b) an identity card or any other valid document confirming the subscriber's Member State of residence, including the use of e-identification services where possible;

(c) bank details such as bank account, credit or debit card of the subscriber;

(d) proof that the subscriber is a party to a contract for an internet or telephone connection in the Member State;

(e) proof that the subscriber is paying a licence fee for other services provided in the Member State, such as public service broadcasting;

(f) proof of the place of installation of a set-top box or similar device used for the supply of services to the subscriber;

(g) proof of registration on national, regional or local electoral rolls, if publicly available.

3. The provider shall choose which of the verification means referred to in paragraph 2 to use.

4. Where the Member State of residence cannot be sufficiently verified on the basis of a single verification means, the provider shall use a combination of no more than two means. The Member State of residence shall not be repeatedly verified without grounds.

5. The Commission is empowered to

adopt delegated acts in accordance with Article 7b concerning the amendment of the list of means for the verification of the subscriber's Member State of residence referred to in paragraph 2 of this Article in order to update it to take account of technological developments. When adopting those delegated acts, the Commission shall consult with experts and representatives from industry and consumers in order to ensure that the principles set out in paragraph 1 of this Article are respected.

Amendment 32

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

Amendment

(1) Any contractual provisions **which are contrary to this Regulation**, including those **contained in contracts** between holders of copyright and related rights, those holding any other rights relevant for **access to, and** the use of, content in online content services and **providers of online content services**, as well as **those contained in contracts between such providers and their subscribers**, shall be unenforceable.

Amendment 33

Proposal for a regulation Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Compliance with the obligations imposed by this Regulation shall not constitute a justifiable reason for the adjustment of charges, fees or rates, or for any other modification of the financial relations between the subscriber, the

provider or any right holder.

Amendment 34

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 35

Proposal for a regulation Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) The provisions of this Regulation shall apply irrespective of the law applicable to contracts concluded between providers of online content services and holders of copyright and related rights or those holding any other rights relevant for access to, and the use of, content in online content services or to contracts between such providers and their subscribers.

Amendment 36

Proposal for a regulation Article 6

Text proposed by the Commission

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.

Amendment

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. ***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.***

Amendment 37

**Proposal for a regulation
Article 7**

Text proposed by the Commission

This Regulation shall apply also to contracts concluded and rights acquired before the date of its application if they are relevant for the provision, the access to and the use of an online content service in accordance with ***Article 3*** after that date.

Amendment

This Regulation shall apply also to contracts concluded and rights acquired before the date of its application if they are relevant for the provision, the access to and the use of an online content service in accordance with ***Articles 3 and 3a*** after that date.

Amendment 38

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

Text proposed by the Commission

Amendment

Article 7a

Assessment

1. Three years after the entry into force of this Regulation, and at three-yearly intervals thereafter, the Commission shall assess the application of this Regulation and submit to the European Parliament and to the Council a report thereon.

2. The report referred to in paragraph 2 shall include, inter alia, an

assessment of the effectiveness of the verification means of the Member State of residence, including newly developed industry standards and practices, and, if necessary, of the need for a review. The report shall assess, in particular, whether or not there has been a significant variation in the revenues of right holders and an increase in prices charged to consumers. The Commission's report shall be accompanied, if appropriate, by a legislative proposal or a non-legislative instrument.

Amendment 39

Proposal for a regulation Article 7 b (new)

Text proposed by the Commission

Amendment

Article 7b

Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
- 2. The power to adopt delegated acts referred to in Article 3b(5) shall be conferred on the Commission for an indeterminate period of time from... *.***
- 3. The delegation of power referred to in Article 3b(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.***
- 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in***

accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 3b(5) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

** Date of entry into force of this Regulation*

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Cross-border portability of online content services in the internal market		
References	COM(2015)0627 – C8-0392/2015 – 2015/0284(COD)		
Committee responsible Date announced in plenary	JURI 12.5.2016		
Opinion by Date announced in plenary	IMCO 12.5.2016		
Associated committees - date announced in plenary	28.4.2016		
Rapporteur Date appointed	Marco Zullo 2.2.2016		
Discussed in committee	13.6.2016	5.9.2016	26.9.2016
Date adopted	29.9.2016		
Result of final vote	+: 33 -: 1 0: 0		
Members present for the final vote	Carlos Coelho, Lara Comi, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Vicky Ford, Ildikó Gáll-Pelcz, Evelyne Gebhardt, Maria Grapini, Sergio Gutiérrez Prieto, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Antonio López-Istúriz White, Marlene Mizzi, Eva Paunova, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Anneleen Van Bossuyt, Marco Zullo		
Substitutes present for the final vote	Pascal Arimont, Kaja Kallas, Morten Løkkegaard, Emma McClarkin, Julia Reda, Marc Tarabella, Sabine Verheyen		