



2015/0284(COD)

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*****I**

DRAFT REPORT

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))

Committee on Legal Affairs

Rapporteur: Jean-Marie Cavada

Rapporteurs (*):

Marco Zullo, Committee on the Internal Market and Consumer Protection

Sabine Verheyen, Committee on Culture and Education

(*) Associated committees – Rule 54 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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(*) Associated committees – Rule 54 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0627),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0392/2015),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 27 April 2016,¹
 - having regard to the opinion of the Committee of the Regions of 8 April 2016,²
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Internal Market and Consumer Protection, the Committee on Culture and Education and the Committee on Industry, Research and Energy (A8-0000/2016),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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,

Amendment

(1) ***Consumer access to the cross-border portability of online content***

¹ Not yet published in the Official Journal.

² Not yet published in the Official Journal.

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.

services previously legally acquired in their Member State of residence is crucial for the proper functioning of the internal market. 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 *for leisure, business or study purposes, for instance.* Therefore, barriers that hamper access and use of such online content services cross border should be eliminated, *in particular in sectors in which the portability of online content is still limited.*

Or. fr

Amendment 2

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. *This new form of consumption should be accompanied by measures facilitating access to online content services for subscribers who* are temporarily present in another Member State of the Union. *The concept of 'temporary presence' should be proportionate to the objective of this Regulation, namely to provide the cross-*

border portability of online content services to subscribers residing temporarily in another EU Member State and returning regularly to their Member State of residence.

Or. fr

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 access and use the online content services that they have acquired the right to use in their *Member State of residence*.

Or. fr

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-border portability of online content services *stem from the fact that* the *rights for the transmission of content protected*

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. *At present*, the *problems associated with* cross-border portability of online content services *differ from one sector to another: whereas* the *music industry*

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.*

began to resolve these problems by proposing multi-territorial or pan-European licences following the implementation of Directive 2014/26 / EU of the European Parliament and of Council^{1a}, the audiovisual sector, where the model of exclusive territorial licensing predominates, is having trouble in adapting to the portability approach. This Regulation should solve all the difficulties of adjusting to portability in all the sectors concerned, without affecting the high level of protection guaranteed by the copyright and related rights in the EU.

^{1a}2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72).

Or. fr

Amendment 5

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) The same applies to other content such as sporting events which is not protected by copyright and/or related rights under Union law but which may be protected by copyright, related rights or by virtue of other specific legislation under national law and which is often also licensed by organisers of such events or offered by online service providers on a territorial basis. Transmissions of such content by broadcasting organisations would be protected by related rights which have been harmonised at Union level. In addition, transmissions of such content

Amendment

(5) The same applies to other content such as sporting events which is not protected by copyright and/or related rights under Union law but which may be protected by copyright, related rights or by virtue of other specific legislation under national law and which is often also licensed by organisers of such events or offered by online service providers on a territorial basis. Transmissions of such content by broadcasting organisations would be protected by related rights which have been harmonised at Union level. In addition, transmissions of such content

often include copyright-protected elements such as music, opening or closing video sequences or graphics. In addition, certain aspects of such transmissions relating to events of major importance for society or events of high interest to the public for the purpose of short news reports, have been harmonised by Directive 2010/13/EU of the European Parliament and of the Council.²² Finally, audiovisual media services within the meaning of Directive 2010/13/EU include services which provide access to content such as sporting events, news or current events.

often include copyright-protected elements such as music, opening or closing video sequences or graphics. In addition, certain aspects of such transmissions relating to events of major importance for society or events of high interest to the public for the purpose of short news reports, have been harmonised by Directive 2010/13/EU of the European Parliament and of the Council.²² Finally, audiovisual media services within the meaning of Directive 2010/13/EU include services which provide access to content such as sporting events, news or current events. ***Article 167 of the Treaty on the Functioning of the European Union requires the Union to take into account the cultural aspects of its actions under other provisions of the Treaties. Respect for cultural diversity, the subject of the Unesco Convention of 20 October 2005 on the Protection and Promotion of the Diversity of Cultural Expressions, should also be taken into account under Article 3 of the Treaty on European Union.***

²² Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services OJ L 95, 15.4.2010, p. 1.

²² Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services OJ L 95, 15.4.2010, p. 1.

Or. fr

Amendment 6

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

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, 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.

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, ***when the latter are temporarily present in a Member State other than their Member State of residence***, 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.

Or. fr

Amendment 7

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The controlled, supervised and proportionate implementation of cross-border portability will provide its beneficiaries with an additional means of accessing online content services and a way of combating any illegal use of these services.

Or. fr

Amendment 8

Proposal for a regulation Recital 7

(7) The rights in works and other protected subject matter are harmonised, inter alia, in Directive 96/9/EC of the European Parliament and of the Council²³, Directive 2001/29/EC of the European Parliament and of the Council,²⁴ Directive 2006/115/EC of the European Parliament and of the Council²⁵ **and** Directive 2009/24/EC of the European Parliament and of the Council²⁶.

(7) The rights in works and other protected subject matter are harmonised, inter alia, in Directive 96/9/EC of the European Parliament and of the Council²³, Directive 2001/29/EC of the European Parliament and of the Council ²⁴, Directive 2006/115/EC of the European Parliament and of the Council ²⁵, Directive 2009/24/EC of the European Parliament and of the Council²⁶ **and Directive 2014/26/EU of the European Parliament and of the Council.**

²³ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases OJ L 077, 27.03.1996, p. 20-28.

²⁴ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ L 167, 22.6.2001, p. 10-19.

²⁵ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property OJ L 376, 27.12.2006, p. 28-35.

²⁶ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs OJ L 111, 5.5.2009, p. 16-22.

²³ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases OJ L 077, 27.03.1996, p. 20-28.

²⁴ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society OJ L 167, 22.6.2001, p. 10-19.

²⁵ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property OJ L 376, 27.12.2006, p. 28-35.

²⁶ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs OJ L 111, 5.5.2009, p. 16-22.

Or. fr

Amendment 9

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) The acquisition of a licence for the relevant rights is not always possible, notably when rights in content are licensed on an exclusive basis. In order to ensure the territorial exclusivity, online service providers often undertake, in their licence contracts with right holders, including broadcasting organisations or events organisers, to prevent their subscribers from accessing and using their service outside the territory for which the service provider holds the licence. ***These contractual restrictions imposed on service providers require providers to take measures such as disallowing access to their services from IP addresses located outside the territory concerned. Therefore, one of the obstacles to the cross-border portability of online content services resides in the contracts concluded between the online service providers and their subscribers, which in turn reflect the territorial restriction clauses included in contracts concluded between those service providers and rights holders.***

Amendment

(10) The acquisition of a licence for the relevant rights is not always possible, notably when rights in content are licensed on an exclusive basis. In order to ensure the territorial exclusivity, online service providers often undertake, in their licence contracts with right holders, including broadcasting organisations or events organisers, to prevent their subscribers from accessing and using their service outside the territory for which the service provider holds the licence. ***While ensuring that the principle of territoriality is respected, which is essential for the proper development and sustainable financing of the European audiovisual and cinematographic sector, this Regulation should satisfy the demand for portability access to online content services for any subscriber temporarily resident in a Member State other than his or her Member State of residence.***

Or. fr

Amendment 10

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) In addition, the Court held in ***Joined cases C-403/08 and C-429/08, Football Association Premier League and Others, EU:C:2011:631***, that certain restrictions to the provision of services cannot be justified in light of the objective of protecting intellectual property rights.

Amendment

(11) In addition, the Court held, in ***a judgment handed down on 4 October 2011 in the context of the satellite broadcasting of sports events broadcast live***, that certain restrictions to the provision of services cannot be justified in light of the objective of protecting intellectual property ***rights, where such restrictions go beyond what is reasonably***

needed for the specific protection of these rights.

^{1 a} Judgment of the Court of Justice of 4 October 2011, Football Association Premier League and Others, C-403/08 and C-429/08, ECLI:EU:C:2011 :631.

Or. fr

Amendment 11

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 *regarding copyright and related rights in order to reach a common approach in the provision* of online content services *to subscribers temporarily present in a Member State other than their Member State of residence*. The *concept of* cross-border portability *should be clearly distinguished from that of cross-border access, which under no circumstances falls within the scope of this Regulation*.

Or. fr

Amendment 12

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

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.

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 a mandatory fee for public broadcasting services must not lead to the assimilation of the latter to fee-charging online content services.***

Or. fr

Amendment 13

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***

Amendment

(17) ***The majority of free online content service providers do not check the Member State of residence of their users with a reasonable degree of certainty at present, as the means of verification required do not generally correspond to the modes of delivery of their services. However, some of these providers are already carrying out serious checks on the Member State of residence of their users or are about to do so. To encourage this trend, in the interests of consumers and without harming suppliers whose technical and financial resources are limited, it should be possible to include online content services that are provided free of charge in the scope of this Regulation provided that their suppliers comply with the requirements for the verification of the Member State of residence of the subscribers in accordance with Article 3 of this Regulation. If these providers exercise the option, they should comply with the same obligations as are***

subscribers.

foreseen by this Regulation for the providers of online content services which are provided against payment of money. Service providers should also be able to reserve the right to consider appropriate ways of informing users, and also rights holders, in order to ensure a high degree of protection of the holders of intellectual property rights incorporated in these services.

Or. fr

Amendment 14

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 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. ***However, this provision should not prevent online content service providers from carrying out activities for information purposes to fight against the***

unauthorised access or use of online content services or against violations of intellectual property rights of content distributed by such services.

Or. fr

Amendment 15

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 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

(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 ***provided for remuneration*** 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. ***Online content service providers should ensure that their subscribers are well informed of the conditions of use of online content services in Member States other than their Member State of residence, including the fact that these conditions may vary from those applicable in their Member State of residence.***

Or. fr

Amendment 16

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 ***provided for remuneration and the providers of free online content services, having opted to be included within the scope of this Regulation***, 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 providers 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, ***within the framework of this Regulation***, 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 should not prevent an online content service provider from offering its subscribers who are temporarily present in another Member State an online content service that the provider lawfully provides in that Member State. However, it is important to note that this legal mechanism should apply for the sole purpose of promoting the portability of online content services.***

Or. fr

Amendment 17

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) **Fee-based content 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. **Online content service providers and rights holders should not be allowed to circumvent the application of this Regulation by opting for the law of a non-Member State of the Union as the law applicable to contracts as they conclude. The same should apply to contracts concluded between online content service providers and subscribers.**

Or. fr

Amendment 18

Proposal for a regulation Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) This Regulation defines several concepts which are necessary for its application, including that of Member State of residence. The Member State of residence should be determined, taking into account the objectives of this Regulation and the need to ensure its uniform application within the Union. Regarding current and future arrangements related to online content services, the decision to provide portability to subscribers temporarily present in

another Member State should not be able to give rise to any special contractual provisions.

Or. fr

Amendment 19

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 rights-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 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.*

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. *This Regulation should oblige providers providing online content services against payment of money to subscribers temporarily present in a Member State other than their Member State of residence to make use of effective means in order to verify the Member State of residence of their subscribers. Service providers should rely on a combination of robust, serious and indisputable criteria. The required means should be reasonable and should not go beyond what is necessary in order to verify the subscriber's Member State of residence.*

Or. fr

Amendment 20

Proposal for a regulation Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) To this end, providers of online content services should apply the verification criteria set out in this Regulation. The aim of this list is to give them legal certainty as regards the verification criteria to be used. It is therefore necessary to adapt the criteria for verification of habitual residence in a given Member State in the manner most appropriate to the corresponding online content service. In the context of this regulation, the subscriber cannot declare that he is habitually resident in more than one Member State. Where the provider of online content services has good reason to doubt the subscriber's habitual residence, he should be entitled to perform random checks or to request the subscriber to provide supplementary information or evidence on a voluntary basis. Alternatively, if the subscriber refuses to accede to his requests, the online content services provider should have the right not to grant him access to cross-border portability.

Or. fr

Amendment 21

Proposal for a regulation Recital 23 b (new)

Text proposed by the Commission

Amendment

(23b) It should be possible for the verification criteria to include random checks on the IP address, on condition

that the checks do not result in precise geolocation of the subscriber, that is, identification of the subscriber's exact geographical position, but consists merely of an indication of the occurrences of consultation of online content services by the subscriber outside his Member State of residence. Such checks must without fail comply with European Parliament and Council Directives 95/46/EC^{1a} and 2002/58/EC^{1b}.

^{1a} 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).

^{1b} 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, 31.7.2002, p. 37).

Or. fr

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

Amendment

(24) This Regulation respects ***the*** 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.

protection of personal data, the freedom of expression, the freedom to conduct a business **and the right to property, including intellectual property**. 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 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. **The necessary technical and organisational measures could include the provision of transparent information to subscribers regarding the methods used for verification, its purpose and the necessary security measures.**

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".*

Or. fr

Amendment 23

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 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

(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 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.
Changes to the terms of use of online content services offered in packages combining an electronic communications service and an online content service resulting from adaptation to the criteria of this Regulation should not trigger any right for subscribers to withdraw from the contract.

Or. fr

Amendment 24

Proposal for a regulation Recital 29 a (new)

Text proposed by the Commission

Amendment

(29a) The Union is subject to obligations under international treaties protecting copyright and related rights, including the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as last amended on 28 September 1979, and the World Intellectual Property Organisation (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), both adopted in Geneva on 20 December 1996. The legal fiction defined in Article 4 of this regulation should, therefore, apply only in the specific case of portability.

Or. fr

Amendment 25

Proposal for a regulation Article 1

Text proposed by the Commission

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, ***can access and use these services***.

This Regulation introduces a common approach ***in the Union*** to ensuring that subscribers to online content services in ***their Member State of residence can access and use these services*** when temporarily present in ***another*** Member State, ***subject to effective prior authentication and verification of their Member State of residence***.

Or. fr

Amendment 26

Proposal for a regulation

Article 2 – 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 is habitually **and actually** residing **and to which he returns regularly**;

Or. fr

Amendment 27

Proposal for a regulation

Article 2 – 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" means a **transient** presence of a subscriber in a Member State other than the Member State of residence;

Or. fr

Amendment 28

Proposal for a regulation

Article 2 – point e – subparagraph 1

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

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 **to a subscriber** in **his** 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:

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:*

Or. fr

Amendment 29

Proposal for a regulation

Article 2 – point e – subparagraph 2 – point 2

Text proposed by the Commission

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

Amendment

(2) without payment of money provided that the *provider has decided to establish the means of verification of the* subscriber's Member State of residence *in accordance with Articles 3a and 3b*;

Or. fr

Amendment 30

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

(2) 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 *against payment of money* shall enable a subscriber who is temporarily present in a Member State to access and use the online content service.

Or. fr

(The wrong numbering in the French version of the Commission proposal should be corrected.)

Amendment 31

Proposal for a regulation

Article 3 – paragraph 3

Text proposed by the Commission

(4) 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 inform the subscriber of the ***potential variations in the*** quality of delivery of the online content service provided in accordance with paragraph 1 ***on his website.***

Or. fr

(The wrong numbering in the French version of the Commission proposal should be corrected.)

Amendment 32

Proposal for a regulation

Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The online content service provider cannot limit the portability of his services as referred to in Article 3(1) to certain specific technologies or devices.

Or. fr

(The wrong numbering in the French version of the Commission proposal should be corrected.)

Amendment 33

Proposal for a regulation

Article 3 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3 ter. Clauses in contracts designed to prohibit or limit the cross-border portability of online content services shall

be unenforceable under this regulation.

Or. fr

(The wrong numbering in the French version of the Commission proposal should be corrected.)

Amendment 34

Proposal for a regulation Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Cross-border portability of online content services provided free of charge

1. A provider of online content services provided free of charge may opt to permit his users who are temporarily present in a Member State other than their Member State of residence to access and use the online content service on condition that he complies with the technical requirements relating to verification of the Member State of residence of users under Article 3b.

2. If a provider of online content services provided free of charge opts to provide the service in accordance with paragraph 1, he shall inform his users and the rights-holders before actually providing the service.

3. If a provider of online content services provided free of charge opts to provide the online content service in accordance with paragraph 1, this regulation shall apply to him.

Or. fr

Amendment 35

Proposal for a regulation Article 3 b (new)

Text proposed by the Commission

Amendment

Article 3b

Verification methods

- 1. Providers of online content services provided in return for payment and providers of online content services provided free of charge who have opted to provide a service in accordance with Article 3a shall use effective means to verify the Member State of residence of their subscribers. These means shall be reasonable and shall not go beyond what is necessary in order to achieve that purpose.**
- 2. In order to comply with the obligations laid down in paragraph 1, the online content services provider shall use a combination of two criteria selected from among the following verification criteria:**
 - a) an identity card, electronic identity card or any other valid document confirming the subscriber's Member State of residence;**
 - b) banking particulars such as the bank account or credit or debit card of the subscriber in his Member State of residence;**
 - c) the place of installation of a decoder or any similar equipment used by the subscriber to access the online content services concerned;**
 - d) an internet or telephone contract or any similar type of contract linking the subscriber to a Member State;**
 - e) the subscriber paying a licence fee for other services provided in the Member State, such as public service broadcasting;**
 - f) periodic checking of the Internet**

Protocol (IP) address or identification of the Member State by means of other geolocation facilities;

g) proof of payment of local taxes, if this information is publicly available;

h) any other verification criterion which affords the same level of security as the previous criteria, having been previously agreed between the online content service provider and the rights-holders, provided that it does not call the current contract into question.

3. The provider of online content services shall be entitled to request the subscriber to provide the information necessary for the verification of his Member State of residence. If the subscriber decides not to provide the information required by the online content services provider in order to verify his Member State of residence, the provider shall have the right not to offer him portability of his online content services as provided for in Article 3(1) for so long as he is unable to verify the subscriber's Member State of residence by means of the criteria listed in Article 3b(2).

Or. fr

Amendment 36

Proposal for a regulation Article 4

Text proposed by the Commission

The provision of an online content service to, as well as the access to and the use of this service by, a subscriber, in accordance with Article 3(1), shall be deemed to occur solely in the Member State of residence ***including*** for the ***purposes*** of ***Directive 96/9/EC, Directive 2001/29/EC, Directive 2006/115/EC, Directive 2009/24 and***

Amendment

The provision of an online content service to ***a subscriber temporarily present in a Member State other than his Member State of residence***, as well as the access to and the use of this service by a subscriber in accordance with Article 3(1), shall be deemed to occur solely in the Member State of residence ***solely*** for the ***purpose*** of

Amendment 37

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

(5) 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, including those between **rights-holders** and any **holder of online content service rights and** online content service providers, as well as **those between** providers and subscribers, which are contrary to Articles 3(1), **3a** and 4 shall be unenforceable.

(The wrong numbering in the French version of the Commission proposal should be corrected.)

Amendment 38

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

(6) **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.**

Amendment

2. **This regulation shall apply irrespective of the law applicable to contracts concluded between online content service providers and holders of copyright or related rights or those holding any other rights relevant to access to or use of online content services, or the law applicable to contracts between online content service providers and their subscribers.**

(The wrong numbering in the French version of the Commission proposal should be corrected.)

Amendment 39

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 including, in particular, for purposes of verification under Article **3b**, shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.

Or. fr

Amendment 40

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.

Or. fr

Amendment 41

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

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

Amendment

2. It shall apply from [**12** months following the day of publication *of this Regulation*].

Or. fr

(The wrong numbering in the French version of the Commission proposal should be corrected.)

EXPLANATORY STATEMENT

The purpose of the Commission proposal is to define and regulate portability, so as to enable consumers who subscribe to online content services acquired legally in their Member State of habitual residence to continue to access the service when they are temporarily in another Member State.

The proposal requires providers of online content services to ensure portability for subscribers on the basis of a legal fiction. Thanks to this principle of a legal fiction, cross-border portability of online content services does not encroach upon territoriality and does not affect copyright rules in the other Member States.

The regulation must remain proportionate to the reality of the market in online content services and to the number of potential users of these services, who are thought to comprise some 5.7% of European consumers¹.

The rapporteur considers that consumer access to cross-border portability of online content services will promote the proper functioning of the internal market, based in particular on the free movement of services and persons.

However, the rapporteur stresses that this regulation has the aim of promoting European cultural diversity and should therefore on no account endanger the continued financing of the European audiovisual and cinema industries, which is mainly based on the territoriality of those rights. In this regard, the regulation favours a clear distinction between portability and cross-border access, and should not even be regarded as a step towards cross-border access.

Scope

The rapporteur stresses that the services covered are specifically online content services provided legally in the Member State of residence.

He agrees with the Commission, which considers that a subscriber's stay in a Member State other than that of residence should not be limited to a specific number of days. He believes that the regulation should not be hampered by contingent factors which place too heavy a burden on the consumer. The regulation must remain simple to apply if it is to benefit the greatest possible number of people in Europe moving for shorter or longer periods within the Union, particularly for reasons of leisure, business or study.

However, the rapporteur considers that the most important element in the regulation is prior, effective and robust authentication of the Member State of residence, both to prevent evasion of the provisions of the regulation and to ensure the permanence of the link maintained by the subscriber with his place of residence.

¹ Impact Assessment (SWD(2015)270) of a Commission proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market (COM(2015)627), p.17.

He is in favour of excluding providers of free online content services from the scope of the regulation, because he considers that at present the majority of these providers do not verify the Member State of residence of their users with absolute certainty, as required in order to comply with the requirements of this regulation.

However, he considers that online content service providers should be permitted inclusion in the scope of the regulation on condition that they take all necessary measures to permit verification of the Member State of residence of their users in accordance with Article 3.

Definitions

The proposal for a regulation is based on two key concepts, which need to be defined: Member State of residence and temporary presence.

The definition of 'Member State of habitual residence' is a vital provision. The rapporteur understands 'Member State of residence' as being the Member State in which the subscriber habitually and actually resides and to which he regularly returns.

Temporary presence outside the country of residence is part of the legal fiction. It therefore comprises transient stays outside the subscriber's Member State of residence for personal, professional or university reasons.

Verification of the Member State of residence

The criteria for verification of the Member State of residence of the subscriber should be indicated in a semi-open list.

This compromise is doubly virtuous because it makes it possible to provide sufficient legal certainty to rights-holders without preventing suppliers from choosing the verification criteria best suited to their market, on condition that they provide the same level of security as the criteria listed.

This will also make it possible to adapt the list in future to cater for potential innovations with regard to verification criteria.

Lastly, your rapporteur considers it necessary that, once the subscriber's Member State of residence has been verified at the time of subscription, the supplier should be able to check his IP address on a random sampling basis in order to identify recurrent use of the online content service in a Member State other than the subscriber's Member State of residence.

Application of the regulation

The retroactivity of the regulation proposed by the Commission, which would entail application to contracts concluded before the date of application, seems, in the view of the rapporteur, to be the right approach.

However, the introduction of the verification measures and of actual verification of the movements of subscribers giving rise to portability is likely to take more than six months, and the same applies to bringing into line the contracts signed before the adoption of the regulation. For that reason, the rapporteur advocates a period of 12 months for the application of the regulation.