

Cross-border portability of online content services in the internal market

2015/0284(COD) - 09/12/2016 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Jean-Marie CAVADA (ADLE, FR) 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.

The Committee on the Internal Market and Consumer Protection as well as the Committee on Culture and Education, exercising their prerogatives as associated committees in accordance with [Article 54 of the Rules of Procedure](#), also gave their opinions on the report.

The committee recommended that the European Parliament's position adopted at first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Objective and scope: Members stipulated that the Regulation introduces a common approach in the Union to **ensuring that subscribers to legally acquired online content services** in their Member State of residence can access and use those services without any additional charges, while temporarily present (for leisure, business or study purposes) in a Member State other than the Member State of residence. Such access and use shall be **subject to effective prior verification** of the subscriber's Member State of residence.

Online content service providers may be included 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.

Obligation to enable cross-border portability of online content services: the provider of an online content service shall:

- have the possibility for a service provider to enable a subscriber also to access and use the content licensed to the service provider for the Member State in which the subscriber is temporarily present;
- ensure that the **quality** provided is not below the standard of that provided in the Member State where the subscriber is temporarily present;
- **inform the subscriber** of potential variations in the quality of delivery of the online content service;
- ensure that the portability of its services is available on the same range and number of devices as is the case in the Member State of residence of the subscriber.

Contractual clauses designed to prohibit or limit the cross-border portability of online content services and limiting the portability to a specific time period shall be unenforceable under this Regulation.

Verification of the Member State of residence: Members proposed that the criteria for verification of the Member State of residence of the subscriber should be indicated in a semi-open list. Thus, online content service providers shall use a **combination of two of the means of verification** (or even just one of the means) among which: an identity card, electronic means of identification, bank details, an internet or telephone service supply contract, the payment of local taxes, a public utility bill of the subscriber confirming the subscriber's address, random checking of the subscriber's Internet Protocol (IP) address.

The provider of an online content service shall be entitled to request that a subscriber provides the information needed to verify his or her Member State of residence. If the subscriber fails to provide such

information, the provider shall not offer him or her portability of its online content services, until such time as it is able to verify the subscriber's Member State of residence.

The **holders of copyright** and related rights or those holding any other rights in the content of an online content service shall be informed of the verification process used by a service provider to verify its subscribers' Member State of residence.

Contractual provisions: 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 subscriber.

It is also stated that providers of online content services shall ensure that any processing of personal data under this Regulation is necessary and proportionate in order to achieve the relevant purpose.

Application of the Regulation: Members proposed a period of **12 months** (instead of 6) for the application of the Regulation.

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.