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

2015/0284(COD) - 18/05/2017 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 586 votes to 34, with 8 abstentions, a 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.

The European Parliament's position adopted at first reading, following the ordinary legislative procedure, amended the Commission proposal as follows:

Subject matter and scope: Members stipulated that this Regulation shall introduce a common approach in the Union to the cross-border portability of online content services, by ensuring that subscribers to portable online content services which are lawfully provided in their Member State of residence can **access and use those services when temporarily present in a Member State other than their Member State of residence**. Such access and use shall be subject to effective prior verification of the subscriber's Member State of residence.

Providers of online content services should **not subject their subscribers to any additional charges** for the provision of cross-border portability of online content services and its use in another Member State where he is temporarily present. They should not take any measures to reduce the quality of service provided.

The provider of an online content service provided **without payment** of money may decide to enable 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 the subscriber's Member State of residence.

Verification of the Member State of residence: the provider shall verify the Member State of residence of the subscriber by using **not more than two of the following means of verification** and shall ensure that the means used are reasonable, proportionate and effective:

- an identity card, electronic means of identification;
- payment details;
- the place of installation of a set top box;
- an internet or telephone service supply contract;
- a utility bill;
- the billing address or the postal address of the subscriber;
- an internet protocol (IP) address check.

If the provider has reasonable doubts about the subscriber's Member State of residence, the provider may repeat the **verification of the Member State of residence** of the subscriber.

If the subscriber fails to provide that information, and as a result the provider is unable to verify the subscriber's Member State of residence, the provider shall not, on the basis of this Regulation, enable the subscriber to access or use the online content service when the subscriber is temporarily present in a Member State.

The **holders of copyright** or related rights or those holding any other rights in the content of an online content service may authorise the provision of, access to and use of their content under this Regulation

without the verification of the Member State of residence. In such cases, the contract between the provider and the subscriber for the provision of an online content service shall be sufficient to determine the subscriber's Member State of residence.

Contractual provisions: any contractual provisions, including those between providers of online content services and holders of copyright or related rights or those holding any other rights in the content of online content services, as well as those between such providers and their subscribers, which are contrary to this Regulation, including those which prohibit cross-border portability of online content services or limit such portability to **a specific time period**, shall be unenforceable.

Moreover, the providers and holders of rights relevant for the provision of online content services should not be allowed to circumvent the application of this Regulation by choosing the **law of a third country** as the law applicable to contracts between them.

Protection of data: the use of the means of verification of the subscriber's Member State of residence and any processing of personal data under this Regulation, shall be **limited to what is necessary and proportionate in order to achieve its purpose**. Data collected for the purpose of verifying the subscriber's Member State of residence shall be immediately and irreversibly destroyed on the completion of each verification.

Application of the Regulation: Members proposed a period of **nine months** 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 its application and submit to the European Parliament and to the Council a report thereon.