Basic information

2015/0284(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Cross-border portability of online content services in the internal market **Subject** 2.40 Free movement of services, freedom to provide 3.30.01 Audiovisual industry and services 3.30.25 International information networks and society, internet 3.50.15 Intellectual property, copyright 4.60.06 Consumers' economic and legal interests	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	CAVADA Jean-Marie (ALDE)	14/03/2016
	Shadow rapporteur NIEBLER Angelika (PPE) NEGRESCU Victor (S&D) KARIM Sajjad (ECR) MAŠTÁLKA Jiří (GUE/NGL) REDA Felix (Verts/ALE) BERGERON Joëlle (EFDD) LEBRETON Gilles (ENF)	

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	ZORRINHO Carlos (S&D)	01/03/2016
IMCO Internal Market and Consumer Protection (Associated committee)	ZULLO Marco (EFDD)	02/02/2016
CULT Culture and Education (Associated committee)	VERHEYEN Sabine (PPE)	16/02/2016
LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	

Council of the European Union	**Council configuration**	**Meetings**	**Date**
	Justice and Home Affairs (JHA)	3546	2017-06-08
	Competitiveness (Internal Market, Industry, Research and Space)	3519	2017-02-20
	Competitiveness (Internal Market, Industry, Research and Space)	3451	2016-02-29

European Commission	**Commission DG**	**Commissioner**
	Internal Market, Industry, Entrepreneurship and SMEs	BIEŃKOWSKA Elżbieta

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
09/12/2015	Legislative proposal published	COM(2015)0627	Summary
21/01/2016	Committee referral announced in Parliament, 1st reading		
29/02/2016	Debate in Council		
28/04/2016	Referral to associated committees announced in Parliament		
29/11/2016	Vote in committee, 1st reading		
29/11/2016	Committee decision to open interinstitutional negotiations with report adopted in committee		
09/12/2016	Committee report tabled for plenary, 1st reading	A8-0378/2016	Summary
20/02/2017	Debate in Council		
23/03/2017	Approval in committee of the text agreed at 1st reading interinstitutional negotiations		
17/05/2017	Debate in Parliament		
18/05/2017	Decision by Parliament, 1st reading	T8-0224/2017	Summary
18/05/2017	Results of vote in Parliament		
08/06/2017	Act adopted by Council after Parliament's 1st reading		
14/06/2017	Final act signed		
14/06/2017	End of procedure in Parliament		
30/06/2017	Final act published in Official Journal		

Technical information

Procedure reference	2015/0284(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation

Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the European Union TFEU 114
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	JURI/8/05563

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE585.465	21/06/2016	
Committee opinion	CULT	PE578.729	15/07/2016	
Committee opinion	ITRE	PE583.955	28/09/2016	
Committee opinion	IMCO	PE583.879	30/09/2016	
Amendments tabled in committee		PE589.348	03/10/2016	
Committee report tabled for plenary, 1st reading/single reading		A8-0378/2016	09/12/2016	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0224/2017	18/05/2017	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00009/2017/LEX	14/06/2017	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2015)0627	09/12/2015	Summary
Document attached to the procedure	SWD(2015)0270	10/12/2015	
Document attached to the procedure	SWD(2015)0271	10/12/2015	
Commission response to text adopted in plenary	SP(2017)494	19/07/2017	
Follow-up document	SWD(2022)0173	20/06/2022	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	IT_SENATE	COM(2015)0627	16/02/2016	

Contribution	PT_PARLIAMENT	COM(2015)0627	16/02/2016	
Contribution	CZ_SENATE	COM(2015)0627	26/04/2016	
Contribution	DE_BUNDESRAT	COM(2015)0627	27/04/2016	
Contribution	IT_CHAMBER	COM(2015)0627	06/06/2016	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0039/2016	08/04/2016	
EESC	Economic and Social Committee: opinion, report	CES0719/2016	27/04/2016	

Additional information

Source	Document	Date
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act

Regulation 2017/1128
OJ L 168 30.06.2017, p. 0001 Summary

Corrigendum to final act 32017R1128R(01)
OJ L 198 28.07.2017, p. 0042 Summary

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

2015/0284(COD) - 14/06/2017 - Corrigendum to final act

CORRIGENDUM to Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (OJ L 168, 30.6.2017).

NB: the corrections concern the dates and time limits originally laid down in respect of: (i) the application to existing contracts and rights acquired before the date of application of the Regulation; (ii) the review of the Regulation by the Commission; (iii) the date of application of the Regulation.

LEGISLATIVE ACT: Regulation (EU) 2017/1128 of the European Parliament and of the Council on cross-border portability of online content services in the internal market.

PURPOSE: to allow consumers who paid for online content services in their home country to access them when visiting another country within the EU.

CONTENT: the Regulation establishes a **common EU approach** to allow subscribers to access online content (such as films, sporting broadcasts, music, e-books or games) for which they have paid in their Member State of residence, when subscribers temporarily visit another Member State when on holidays, business trips or limited student stays.

Providers of all online content services that are provided against the payment of money will **not be able to impose any additional charges on the subscriber** for access and use of the service in another Member State where the subscriber is temporarily present. They may not take any action to reduce the quality of delivery of the online content service when providing the online content service.

Verification of the Member State of residence: to avoid abuses, service providers will verify the subscribers' member state of residence. The verifications will be carried out in compliance with EU data protection rules.

The means of verification will be **reasonable, proportionate and effective**. Unless the subscriber's Member State of residence can be verified with sufficient certainty on the basis of a single means of verification, providers should rely on two means of verification from the list in the Regulation. These may be:

- an identity card;
- bank account or credit or debit card number;
- the place of installation of a set top box, a decoder or a similar device used for supply of services;
- the payment by the subscriber of a licence fee for other services;
- the billing address or the postal address;
- an Internet protocol (IP) address check.

If the provider has **reasonable doubts** about the subscriber's Member State of residence, he may repeat the verification of the Member State of residence of the subscriber. The provider will be authorised to **cease the access to the online service** when the subscriber cannot prove his/her member state of residence.

Copyright holders will have the possibility of authorising the use of their content without the obligation to verify the subscriber's residence. In such cases, the contract between the provider and the subscriber for the provision of an online content service should be used to determine the latter's Member State of residence.

Online content services provided without payment of money: free to air services, such as those provided by certain public broadcasters, will have the option of benefiting from the regulation provided that they verify the country of residence of their subscribers. The provider shall inform its subscribers of its decision to provide the online content service, prior to providing that service.

Application to existing contracts: this Regulation shall apply also to contracts concluded and rights acquired **before the date of its application**. By 2 June 2018, the provider of an online content service provided against payment of money shall verify the Member State of residence of those subscribers who concluded contracts for the provision of the online content service before that date.

Review: by 2 April 2021, and as required thereafter, the Commission shall assess the application of the Regulation in the light of legal, technological and economic developments, and submit to the European Parliament and to the Council a report thereon.

ENTRY INTO FORCE: 20.7.2017.

APPLICATION: from 1.4.2018.

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

2015/0284(COD) - 14/06/2017 - Final act

PURPOSE: to allow consumers who paid for online content services in their home country to access them when visiting another country within the EU.

LEGISLATIVE ACT: Regulation (EU) 2017/1128 of the European Parliament and of the Council on cross-border portability of online content services in the internal market

CONTENT: the Regulation establishes a common EU approach to allow subscribers to access online content (such as films, sporting broadcasts, music, e-books or games) for which they have paid in their Member State of residence, when subscribers temporarily visit another Member State when on holidays, business trips or limited student stays.

Providers of all online content services that are provided against the payment of **money will not be able to impose any additional charges** on the subscriber for access and use of the service in another Member State where the subscriber is temporarily present. They may not take any action to reduce the quality of delivery of the online content service when providing the online content service.

Verification of the Member State of residence: to avoid abuses, service providers will verify the subscribers' member state of residence. The verifications will be carried out in compliance with EU data protection rules.

The means of verification will be **reasonable, proportionate and effective**. Unless the subscriber's Member State of residence can be verified with sufficient certainty on the basis of a single means of verification, providers should **rely on two means of verification** from the list in the Regulation. These may be:

- an identity card;
- bank account or credit or debit card number;
- the place of installation of a set top box, a decoder or a similar device used for supply of services;
- the payment by the subscriber of a licence fee for other services;
- the billing address or the postal address;

- an Internet protocol (IP) address check.

If the provider has reasonable doubts about the subscriber's Member State of residence, he may repeat the verification of the Member State of residence of the subscriber. The provider will be authorised to **cease the access to the online service** when the subscriber cannot prove his/her member state of residence.

Copyright holders will have the possibility of authorising the use of their content without the obligation to verify the subscriber's residence. In such cases, the contract between the provider and the subscriber for the provision of an online content service should be used to determine the latter's Member State of residence.

Online content services provided without payment of money: free to air services, such as those provided by certain public broadcasters, will have the option of benefiting from the regulation provided that they verify the country of residence of their subscribers. The provider shall inform its subscribers of its decision to provide the online content service, prior to providing that service.

Review: by 21 March 2021, and as required thereafter, the Commission shall assess the application of the Regulation in the light of legal, technological and economic developments, and submit to the European Parliament and to the Council a report thereon.

ENTRY INTO FORCE: 20.7.2017.

APPLICATION: from 20.3.2018.

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.

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.

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

2015/0284(COD) - 09/12/2015 - Legislative proposal

PURPOSE: to ensure the cross-border portability of online content services.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

BACKGROUND: the rapid take up of online content services and increasing use of portable devices, including across borders, means that Europeans today expect to use online content services from wherever they are in the Union (cross-border portability). However, **when people travel in the EU, they frequently cannot enjoy such cross-border portability or can do so only to a limited extent**. The absence of, or problems with, cross border portability of online content services in the EU results from the licensing practices of right holders and/or the commercial practices of service providers.

Cross-border portability concerns online content services to which consumers have lawful access, or content that they purchased or rented online in their country of residence and to which they want to continue to have access when travelling in the EU. Consumer demand for the cross-border portability of online content services is substantial and expected to grow

The Digital Single Market Strategy puts forward a range of initiatives with the objective of creating an internal market for digital content and services. This proposal is among the first of the initiatives under the strategy. The Commission considers that the proposal will have positive effects on competitiveness as it will help innovation in online content services and attract more consumers to them.

IMPACT ASSESSMENT: the preferred option, in addition to establishing a mechanism ensuring portability: (i) would impose an obligation on providers of online content services to ensure cross-border portability of such services and (ii) would establish that any provisions in contracts limiting cross-border portability would be unenforceable. This option would respond to consumers' expectations and the impact on industry is expected to be marginal because the portability of online content services does not extend the range of users of the service and as such does not challenge the territorial exclusivity of licences

CONTENT: the proposed regulation introduces a **common approach** to ensuring that subscribers to online content services in the Union, which are delivered on a portable basis, **can receive these services when temporarily present in another Member State** (cross-border portability).

Definitions : the proposal contains definitions that will need to be interpreted in a uniform manner in the EU:

- **a "subscriber"** is defined as a consumer who, on the basis of a contract for the provision of an online content service, may access and use such service in the Member State of his or her residence;
- **a "consumer"** is defined as any natural person who, in contracts covered by the regulation, is acting for purposes which are outside his or her trade, business, craft or profession.

"Online content service" is covered by the proposal when: (i) the service is lawfully provided online in the Member State of residence; (ii) the service is provided on a portable basis; (iii) the service is an audiovisual media service within the meaning of Directive 2010/13/EU of the European Parliament and of the Council or a service whose main feature is the provision of access to works, other subject matter or transmissions of broadcasting organisations.

Two scenarios are covered as regards online content services: (i) services which are provided for **payment of money (directly or indirectly);** and (ii) services which are provided **without payment** of money provided that the subscriber's Member State of residence is verified by the service provider.

- if a subscriber receives an online content service without payment of money, the provider will only be obliged to enable the subscriber to enjoy cross-border portability if the provider verifies the subscriber's Member State of residence;
- if, however, a consumer just accepts the terms and conditions of a free of charge online content service but does not register on a website of such service (and hence the provider does not verify the Member State of residence of such a consumer), the service provider will not be obliged to provide cross-border portability for such service.

Cross-border portability of online content services: the proposal requires the provider to enable a subscriber to use the online content service while the subscriber is temporarily present in another Member State. This applies to the same content, on the same range and number of devices and the same range of functionalities as offered in the Member State of residence.

However, this obligation **does not extend to any quality requirements** applicable to the delivery of such service when the service is provided in the Member State of residence. 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. In addition, the draft regulation will **oblige the provider to inform the subscriber of the quality of delivery** of the online content service when accessed and used in a Member State other than the Member State of residence.

Localisation: the proposal sets out a **mechanism** establishing the localisation of the service for purposes of portability: the provision as well as the access to and use of the service by a subscriber who is temporarily present in another Member State is deemed to occur solely in the Member State of residence. For the licensing of copyright and related rights, this means that the relevant copyright acts, which occur when the service is provided to consumers on a basis of crossborder portability, are **deemed to occur solely in the Member State of residence**.

Contractual provisions: the proposal renders unenforceable:

- any contractual terms contrary to the cross-border portability obligation, in particular those which limit either consumer's possibilities as to the cross-border portability of his or her online content services or service provider's ability to deliver it;
- any contractual terms contrary to the legal mechanism which enables service providers to comply with the cross-border portability obligation.

However, **right holders** may require that the service provider makes use of means in order to verify that the service is provided in conformity with the regulation.

The draft regulation also provides that: (i) the **processing of personal data** carried out within the framework of the Regulation shall be carried out in compliance with Directive 95/46/EC and Directive 2002/58/EC; (ii) the regulation shall also apply to any **contracts concluded and rights acquired** before the date of the application of the regulation if they are relevant for the provision of the service, the access to or the use of the service.