

## Cross-border portability of online content

The European Parliament is to vote in plenary in May on new rules on cross-border portability, which would enable consumers to access their online subscriptions for content services when they travel across the EU and are temporarily outside their Member State of residence.

### Background

On 9 December 2015, the European Commission proposed that providers of online content services enable their subscribers to access and use online content services – such as videos and music – which are lawfully provided in their Member State of residence, when they travel in the EU and are temporarily present in other Member States. The Committee on Legal Affairs (JURI) adopted its [report](#) in December 2016. Following trilogue negotiations between the Parliament, Council and Commission, the Council [endorsed](#) the compromise text on 23 March 2017, and the JURI Committee's subsequent approval opens the way to a vote in plenary

### Main points of the compromise text

**Scope of the regulation.** As a matter of principle, the providers of online content services provided against payment of money (such as Netflix, Sky's Now TV, or Spotify), must ensure the cross-border portability of their services. Providers of free-of-charge online content services (such as public service broadcasters) can, nevertheless, decide to offer portable services to their subscribers provided they comply with the requirements regarding verification of the Member State of residence and inform their subscribers and the relevant rights-holders.

**The notion of temporary presence** in other Member States means 'for a limited period of time' and covers situations such as leisure, travel for business reasons, or learning mobility. The compromise intends to set some guidance for a 'fair use' of the content portability right without affecting existing licensing models (especially the territorial licensing of copyright) and existing financing mechanisms (in particular in the cinema and audiovisual sectors).

**The concept of Member State of residence** implies that the subscriber has 'his or her actual and stable residence' in this Member State.

**Verification of the Member State of residence.** Providers of online content must verify the subscriber's Member State of residence by using no more than two – reasonable, proportionate and effective – means of verification in a list (including, inter alia, identity card, payment details, location of a decoder, internet or telephone service supply contract, internet protocol (IP) address). Some safeguards were, however, added by the EP to ensure data protection and privacy are respected (e.g. for IP address checks).

**A waiver clause for verification** was added at the request of the EP. The verification obligation does not apply when all the holders of copyright, related rights, or other rights in the content used by the provider decide to permit access to and use of their content without verification of the Member State of residence. The holder of the rights can however withdraw the authorisation and – to mitigate a potential imbalance in negotiating relationships between rights-holders and service providers – this possibility cannot be restricted by contract.

Some stakeholders (such as the consumer association [BEUC](#)) have welcomed the compromise text, while others found that some key points remain problematic. The [Society of Audiovisual Authors](#) (SAA) stressed that some means of verification of the Member State of residence (such as the credit card number of the subscriber) are not adequate and fear that, given the market power of some service providers, many European rights-holders will be compelled to apply the waiver clause and authorise portability of their content without verification of the Member State of residence.

First-reading report: [2015/0284\(COD\)](#); Committee responsible: JURI; Rapporteur: Jean-Marie Cavada (ALDE, France)

