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Subject:	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 - Analysis of the final compromise text with a view to agreement

Delegations will find in the Annex the overall compromise package agreed upon at the last trilogue on the above mentioned proposal, which took place on 7 February.

The Committee is invited to consider whether it can endorse this text in view of the future adoption of the proposed Regulation at first reading.

REGULATION (EU) No .../2017
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of
on ensuring the cross-border portability of online content services in the internal market
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 264, 20.7.2016, p. 86.

² Position of the European Parliament of ... [(OJ ...)/(not yet published in the Official Journal)] and decision of the Council of

Whereas:

- (1) Seamless access throughout the Union to online content services that are lawfully provided to consumers in their Member State of residence is important for the smooth functioning of the internal market and for the effective application of the principles of free movement of persons and services. Since the internal market comprises an area without internal frontiers relying, *inter alia*, on the free movement of persons and services, it is necessary to ensure that consumers can use portable online content services which offer access to content such as music, games, films, entertainment programmes 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 purposes such as leisure, travel, business trips or learning mobility. Therefore, barriers that hamper access and use of such online content services cross border in such cases should be eliminated.
- (2) The technological development leading to a proliferation of portable devices such as laptops, 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.
- (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 continue accessing and using the online content services that they have legally acquired the right to use in their Member State of residence.

- (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, entertainment programmes or films which are protected by copyright and/or related rights under Union law. At present, the obstacles to cross-border portability of online content services differ from one sector to another. They stem from the fact that the rights for the transmission of content protected 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.
- (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 providers of online content services 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. Also, 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 Council³. 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.

³ 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 (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

- (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 providers of online content services to deliver to consumers full access to their online content services when the consumer is temporarily present in a Member State other than his or her Member State of residence, 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.
- (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 Council⁴, Directive 2001/29/EC of the European Parliament and of the Council⁵, Directive 2006/115/EC of the European Parliament and of the Council⁶ and in Directive 2009/24 of the European Parliament and of the Council⁷. The provisions of international agreements in the area of copyright and related rights concluded by the Union notably the TRIPS Agreement, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty form an integral part of the Union legal order. Union law should, insofar as is possible, be interpreted in a manner that is consistent with international law.

⁴ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

⁵ 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).

⁶ 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).

⁷ 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).

- (8) Providers of online content services that make use of works or other protected subject-matter, such as books, audiovisual works, recorded music or broadcasts must have the rights to use such content for the relevant territories.
- (9) The transmission by the provider of an online content service of content that is protected by copyright and related rights requires the authorisation of the relevant right holders such as authors, performers, producers or broadcasting organisations for the content that would be included in the transmission. This is equally true when such transmission takes place for the purpose of allowing a consumer to carry out a download in order to use an online content service.
- (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, providers of online content services 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 provider holds the licence. These contractual restrictions imposed on 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 is to be found in the contracts concluded between the providers of online content services and their subscribers, which in turn reflect the territorial restriction clauses included in contracts concluded between those providers and right holders.
- (11) The case-law of the Court of Justice should be taken into account when balancing the objective of protecting intellectual property rights with the fundamental freedoms of the Treaty.

- (12) Therefore, the objective of this Regulation should be to adapt the harmonised legal framework on copyright and related rights and to provide a common approach to the provision of online content services to subscribers temporarily present in a Member State other than their Member State of residence by removing barriers to cross-border portability of lawfully provided online content services.

This Regulation should ensure cross-border portability in all the sectors concerned and hence provide consumers with an additional means of accessing online content legally, without affecting the high level of protection guaranteed by the copyright and related rights in the Union, without changing the existing licensing models, such as territorial licensing, and without affecting the existing financing mechanisms.

The concept of cross-border portability should be distinguished from that of cross-border access by consumers to services provided in a Member State other than their Member State of residence, which does not fall within the scope of this Regulation.

- (12a) Given that there are Union instruments adopted in the field of taxation, it is necessary to exclude the field of taxation from the scope of this Regulation. Therefore, this Regulation should not affect the application of any provision related to taxation.

- (13) This Regulation should, therefore, apply to online content services that a provider, after having obtained the relevant rights from right holders in a given territory, provides to its subscribers on the basis of a contract, by any means including streaming, downloading, through applications or any other technique which allows use of that content. For the purposes of this Regulation the term contract should cover any agreement between a provider and a subscriber, including any arrangement by which the subscriber accepts the provider's terms and conditions for the provision of the service, whether against payment of money or without such payment. A registration to receive content alerts, or a mere acceptance of HTML cookies should not be regarded as a contract for the provision of online content service for the purposes of this Regulation.
- (14) An online service which is not an audiovisual media service within the meaning of Directive 2010/13/EU and which uses works, other subject matter or transmissions of broadcasting organisations in a merely ancillary manner should not be covered by this Regulation. Such services include websites that use works or other protected subject matter only in an ancillary manner such as graphical elements or music used as background, where the main purpose of such websites is, for example, the sale of goods.

- (15) This Regulation should apply only to online content services which subscribers can effectively access and use in their Member State of residence without being limited to a specific location, as it is not appropriate to require providers of online content services that do not offer portable services in the Member State of residence of a subscriber to do so across borders.
- (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 an electronic communications service and an online content service operated by another provider. For the purposes of this Regulation, the payment of a mandatory fee for public broadcasting services should not be regarded as a payment of money for an online content service.
- (16a) Providers of online content services should not, in order to provide cross-border portability in compliance with this Regulation, subject their subscribers to any additional charges. Subscribers, in order to access and use online content services in Member States other than their Member State of residence, may be subject to fees payable to operators of electronic communications networks used to access these services.

(17) Providers of online content services which are provided without payment of money generally do not verify the Member State of residence of their subscribers. The inclusion of such online content services in the scope of this Regulation would involve a major change to the way these services are delivered and involve disproportionate costs. On the other hand, the exclusion of these services from the scope of the Regulation would mean that these services would not be able to take advantage of the legal mechanism provided for in this Regulation and enabling providers of online content services to offer their services on a portable basis across the Union even when they decide to invest in means allowing the verification of their subscriber's Member State of residence. This is why providers of online content services which are provided without payment of money should have an option to be included in the scope of this Regulation provided that they comply with the requirements on the verification of the Member State of residence of their subscribers. If these providers exercise that option, they should comply with the same obligations as are foreseen by this Regulation for the providers of online content services which are provided against payment of money. Furthermore, they should inform subscribers, the relevant holders of copyright and related rights and those holding any other rights in the content of the online content service of their decision to exercise that option in a timely manner. Such information could be provided on the provider's website.

(18) In order to ensure the cross-border portability of online content services it is necessary to require providers of online content services covered by this Regulation to enable their subscribers to use the service in the Member State of their temporary presence in the same manner as in the subscriber's Member State of residence. Subscribers should have access to the online content service with 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. The obligation to enable portability of the online content service is mandatory and therefore the parties may not exclude it, derogate from it or vary its effect. Any action by a 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.

(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 providers of online content services and thus ultimately for subscribers. Therefore, it is not appropriate for this Regulation to require that the provider 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 guarantees certain quality of delivery to subscribers while temporarily present in other Member States, the provider shall be bound by such guarantee. The provider, on the basis of the information in its possession, should provide its subscribers in advance with information concerning the quality of delivery of an online content service in Member States other than the Member State of residence, in particular the fact that the quality of delivery may vary from the one applicable in their Member State of residence. The provider should not be under an obligation to actively pursue information on the quality of delivery of the service in Member States other than the Member State of residence of the subscriber. The relevant information could be provided on the provider's website.

(20) In order to ensure that providers of online content services covered by 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 the provision of, the access to and the use of such online content service should be deemed to occur in the subscriber's Member State of residence. This legal mechanism should apply for the sole purpose of ensuring the portability of online content services. An online content service is provided lawfully if both the service and the content are provided in a lawful manner in the Member State of 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 subscriber's Member State of residence does not limit the possibility for a service provider to enable the subscriber to additionally access and use the content lawfully offered by the service provider in the Member State where the subscriber is temporarily present.

(21) For the licensing of copyright and related rights, this means that relevant acts of reproduction, communication to the public and making available of works and other protected subject-matter, as well as the acts of extraction or re-utilization in relation to databases protected by sui generis rights, which occur when the service is provided to subscribers when they are temporarily present in a Member State other than their Member State of residence, should be deemed to occur in the subscribers' Member State of residence. The providers of online content services covered by this Regulation, therefore, should be deemed to carry out such acts on the basis of the respective authorisations from the right holders concerned for the Member State of residence of these subscribers. Whenever providers can carry out acts of communication to the public or reproduction in the Member State of the subscriber on the basis of an authorisation from the right holders concerned, a subscriber who is temporarily present in a Member State other than his Member State of residence should be able to access and use the service and where necessary carry out any relevant acts of reproduction such as downloading which he would be entitled to do in his own Member State of residence. The provision of an online content service by a provider to a subscriber temporarily present in a Member State other than his or her Member State of residence and the use of the service by such a subscriber in accordance with this Regulation should not constitute a breach of copyright and related rights or any other rights relevant for the use of the content in the service.

(22) Providers of online content services covered by this Regulation 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 such online content services should be unenforceable. The providers and holders of rights relevant for the provision of the online content services should not be allowed to circumvent the application of this Regulation by virtue of the choice of the law of a non-member country as the law applicable to contracts between them. The same should apply to contracts concluded between providers and subscribers.

(22a) This Regulation defines several concepts necessary for its application, including the Member State of residence. The Member State of residence should be determined taking into account the objectives of this Regulation and the necessity to ensure its uniform application in the Union. The definition of Member State of residence implies that the subscriber has actual and stable residence in the Member State. A provider who verified the Member State of residence in accordance with this Regulation should be able to assume, for the purposes of this Regulation, that the Member State of residence as verified is the only Member State of residence of the subscriber. Providers should not be obliged to verify whether their subscribers are also subscribers to an online content service in another Member State.

(23) This Regulation should enable subscribers to enjoy online content services to which they subscribed in their Member State of residence when they are temporarily present in another Member State. Subscribers should be eligible for cross-border portability of online content services only if they reside in a Member State of the Union. Therefore, this Regulation should oblige providers of online content services to make use of reasonable, proportionate and effective means in order to verify the Member State of residence of their subscribers. To that effect, the providers should rely on the means of verification listed in this Regulation. This does not preclude agreement between providers and right holders on these means of verification within the limits of this Regulation. The objective of this list is to provide legal certainty as to the means of verification to be used by providers as well as to limit interference with subscribers' privacy. In each case, account should be taken of the effectiveness and proportionality of a particular means of verification in the given Member State and for the given type of online content service. Unless the 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. In cases where the provider has reasonable doubts concerning the subscriber's Member State of residence, the provider should be able to repeat the verification of the Member State of residence of the subscriber. The provider should implement the necessary technical and organisational measures required for the processing of private data collected for the purpose of verification of the Member State of residence under this Regulation. Examples of such measures include transparent information to the individuals about the methods used for the verification and its purpose, and appropriate security measures.

(23a) In order to verify the Member State of residence, the provider of an online content service should rely, if possible, on information which is in the provider's possession, such as billing information. As concerns contracts concluded prior to the date of application of this Regulation as well as the verification carried out upon renewal of the contract, the provider should be allowed to request the subscriber to provide the information necessary to verify his or her Member State of residence only when that cannot be determined on the basis of information which is in the provider's possession.

(23b) IP address checks performed under this Regulation should be conducted in accordance with Directives of the European Parliament and of the Council No 95/46/EC⁸ and 2002/58/EC⁹. Also, considering that for the purpose of verification of the subscriber's Member State of residence what matters is not the precise location of the subscriber, but rather the Member State in which the subscriber is accessing the service, data on precise location or any other personal data should not be collected and processed for this purpose. Where a provider has reasonable doubts about a subscriber's Member State of residence and carries out an IP address check to verify the Member State of residence, the sole purpose of the IP address checks should be to establish whether a subscriber is accessing and/or using the online content service within or outside his or her Member State of residence. Therefore, in such cases, the data resulting from the checking of IP address should be collected only in binary format and in compliance with applicable data protection rules. The provider should not go beyond this level of information.

⁸ 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).

⁹ 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".

(23c) A holder of copyright, related rights, or other rights in content of online content services should remain able to exercise his or her contractual freedom to permit his or her content to be accessed and used under this Regulation without verification of the Member State of residence. This may be particularly relevant in sectors such as music and e-books. Each right holder should be able to take such decisions freely when entering into contracts with providers. Contracts between right holders and providers should not restrict the possibility for right holders to withdraw such permission on provision of reasonable notice to the provider. The permission given by an individual right holder does not as such release the provider from the obligation to verify the Member State of residence of the subscriber. It is only in the case when all the holders of copyright, related rights or other rights in the content used by the provider decide to permit their content to be accessed and used without verification of the Member State of residence that the obligation to verify should not apply, and the contract between the provider and the subscriber for the provision of an online content service should be used to verify the latter's Member State of residence while all other aspects of this Regulation should remain applicable.

(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 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 of the European Parliament and of the Council 95/46/EC and 2002/58/EC. In particular, service providers should ensure that any processing of personal data under this Regulation must be necessary, reasonable and proportionate in order to achieve the relevant purpose. Where authentication of a subscriber is sufficient in order to deliver the service provided, identification of the subscriber should not be required. Data collected pursuant to this Regulation for the purposes of the verification of the Member State of residence should be stored by the provider no longer than is needed to complete such verification. Such data should be immediately and irreversibly destroyed after the verification is completed. However, this is without prejudice to the storage of data which was collected for another legitimate purpose, subject to applicable data protection rules, including rules concerning the storage of that data.

- (25) This Regulation should improve competitiveness by fostering innovation in online content services and attracting more consumers. This Regulation should not affect the application of the rules of competition, and in particular Articles 101 and 102 of the Treaty. The rules provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty.
- (25a) This Regulation should not affect the application of Directive 2014/26/EU of the European Parliament and of the Council¹⁰ and in particular Title III thereof. This Regulation is consistent with the objective of facilitating the lawful access to content, which is protected by copyright and related rights, as well as services linked thereto.
- (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 providers of online content services covered by this Regulation operating in the internal market, particularly for SMEs, 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 should ensure that when 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. This should also apply to providers of online content services offering packages combining electronic communications services and online content services. Finally, this 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.

¹⁰ Directive 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).

- (27) As this Regulation will therefore apply to some contracts and rights acquired before the date of its application, it is also appropriate to provide for a reasonable period between the date of entry into force of this Regulation and the date of its application, thereby allowing right holders and providers of online content services covered by this Regulation to make the arrangements necessary to adapt to the new situation, as well as allowing providers to amend the terms of use of their services. Changes to the terms of use of online content services offered in packages combining an electronic communications service and an online content service that are made strictly in order to comply with the requirements of this Regulation should not trigger for subscribers any right under national laws transposing the regulatory framework for electronic communications networks and services to withdraw from contracts for the provision of such electronic communications services.
- (28) In order to achieve the objective of ensuring cross-border portability of online content services in the Union, it is appropriate to adopt a regulation, which directly applies in Member States. This is necessary in order to guarantee a uniform application of the cross-border portability rules across Member States and their entering into force at the same time with regard to all online content services. Only a regulation ensures the degree of legal certainty which is necessary in order to enable consumers to fully benefit from cross-border portability across the Union.

(29) Since the objective of this Regulation, namely the adaptation of the legal framework so that cross-border portability of online content services is provided in the Union, cannot be sufficiently achieved by Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective. Therefore, this Regulation does not substantially affect the way the rights are licensed and does not oblige right holders and providers to renegotiate contracts. Moreover, this Regulation does not require that the providers take measures to ensure the quality of delivery of online content services outside the Member State of residence of the subscriber. Finally, this Regulation does not apply to providers who offer online content services without payment of money and who do not exercise the option to enable the cross-border portability of their services. Therefore, it does not impose any disproportionate costs.

HAVE ADOPTED THIS REGULATION:

Article 1
Objective and scope

1. This Regulation introduces a common approach in the Union to ensuring that subscribers to portable online content services which are lawfully provided in their Member States of residence can access and use these services when temporarily present in a Member State other than their Member State of residence.
2. This Regulation shall not apply to the field of taxation.

Article 2
Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) "Subscriber" means any consumer who, on the basis of a contract for the provision of an online content service with a provider whether against payment of money or without such payment, is entitled to access and use such service in the Member State of residence;
- (b) "Consumer" means any natural person who, in contracts covered by this Regulation, is acting for purposes which are outside his or her trade, business, craft or profession;
- (c) "Member State of residence" means the Member State, determined on the basis of Article 3a, where the subscriber has his or her actual and stable residence;
- (d) "Temporarily present in a Member State" means the presence of a subscriber in a Member State other than his or her Member State of residence for a limited period of time;

- (e) "Online content service" means a service as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union that a provider is lawfully providing to a subscriber in his or her Member State of residence on agreed terms, online and on a portable basis and which is:
- (i) an audiovisual media service as defined in point (a) of Article 1 of Directive 2010/13/EU, or
 - (ii) 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;
- (f) "Portable" means that subscribers can effectively access and use the online content service in the Member State of residence without being limited to a specific location.

Article 3

Obligation to enable cross-border portability of online content services

1. The provider of an online content service provided against payment of money shall enable a subscriber who is temporarily present in a Member State to access and use the online content service in the same manner as in the Member State of residence including by providing 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.
 - 1a. The provider of an online content service provided against payment of money shall not impose any additional charges on the subscriber for the access to and the use of the online content service in accordance with paragraph 1.
2. The obligation set out in paragraph 1 shall not extend to any quality requirements applicable to the delivery of an online content service that the provider is subject to when providing this service in the Member State of residence, unless otherwise expressly agreed between the provider and the subscriber.

The provider shall not take any action to reduce the quality of delivery of the online content service when providing the online content service in accordance with paragraph 1.

3. The provider shall, on the basis of the information in its possession, provide the subscriber with information concerning the quality of delivery of the online content service provided in accordance with paragraph 1 prior to providing that service. The information shall be provided by means which are adequate and proportionate.

Article 3a

Verification of the Member State of residence

1. At the conclusion and the renewal of a contract for the provision of an online content service provided against payment of money, the provider shall verify the Member State of residence of the subscriber using not more than two of the following means of verification and while ensuring that the means used are reasonable, proportionate and effective:
 - (a) an identity card, electronic means of identification, in particular notified eIDs in accordance with Regulation (EU) No 910/2014 of the European Parliament and of the Council¹¹, or any other valid identity document confirming the subscriber's Member State of residence;
 - (b) payment details such as the bank account or credit or debit card number of the subscriber;
 - (c) the place of installation of a set top box, a decoder or a similar device used for supply of services to the subscriber;
 - (d) the payment by the subscriber of a licence fee for other services provided in the Member State, such as public service broadcasting;

¹¹ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

- (e) an internet or telephone service supply contract or any similar type of contract linking the subscriber to the Member State;
- (f) registration on local electoral rolls, if the information concerned is publicly available;
- (g) the payment of local taxes, if the information concerned is publicly available;
- (h) a utility bill of the subscriber linking the subscriber to the Member State;
- (i) the billing address or the postal address of the subscriber;
- (j) a declaration by the subscriber confirming his or her address in the Member State;
- (k) Internet Protocol (IP) address check, to identify the Member State where the subscriber accesses the online content service.

The means of verification under points (i) to (k) shall only be used in combination with one of the means of verification under points (a) to (h), unless the postal address under point (i) is included in a publicly available official register.

2. If the provider has reasonable doubts about the subscriber's Member State of residence in the course of the duration of the contract for the provision of an online content service, the provider may repeat the verification of the Member State of residence of the subscriber, in accordance with paragraph 1, except that the means of verification under point (k) can be used as a sole means. Data resulting from the use of the means of verification under point (k) shall be collected only in binary format.

3. The provider shall be entitled to request the subscriber to provide the information necessary to determine his or her Member State of residence in accordance with paragraphs 1 and 2. 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.
4. The holders of copyright and related rights or those holding any other rights in the content of an online content service may authorise the 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 verify the subscriber's Member State of residence. The holders of rights shall be entitled to withdraw the authorisation upon the provision of reasonable notice to the provider.
5. The contract between the provider and the holders of rights shall not restrict the possibility for the holders of rights to withdraw the authorisation referred to in paragraph 4.

Article 3b

Cross-border portability of online content services provided without payment of money

1. The provider of an online content service provided without payment of money may choose 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 in accordance with this Regulation.
2. The provider shall inform subscribers, the relevant holders of copyright and related rights and those holding any other rights in the content of online content service of its decision to provide the online content service in accordance with paragraph 1 prior to providing that service. The information shall be provided by means which are adequate and proportionate.
3. If the provider chooses to provide the online content service in accordance with paragraph 1, this Regulation shall apply to that provider.

Article 4

Localisation of the provision, the access to and the use of online content services

The provision of an online content service under this Regulation to a subscriber who is temporarily present in a Member State, as well as the access to and the use of this service by that subscriber, shall be deemed to occur solely in their Member State of residence.

Article 5
Contractual provisions

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

2. The provisions of this Regulation shall apply irrespective of the law applicable to contracts concluded between providers of online content services and holders of copyright and related rights or those holding any other rights relevant for the access to and the use of content in online content services or to contracts between such providers and their subscribers.

Article 6

Protection of personal data

1. The processing of personal data carried out within the framework of this Regulation including, in particular, for purposes of verification under Article 3a, shall be carried out in compliance with Directive 95/46/EC and Directive 2002/58/EC. In particular, the use of means of verification under Article 3a and any processing of personal data under this Regulation, shall be limited to what is necessary and proportionate in order to achieve its purpose.
2. Data collected pursuant to Article 3a shall be used solely for the purpose of verifying the subscriber's Member State of residence. They shall not be communicated, transferred, shared, licensed or otherwise transmitted or disclosed to holders of copyright or related rights or to holders of any other rights relevant for the access to and the use of content in online content services or any other third parties.
3. Data collected pursuant to Article 3a shall be stored by the provider of online content services only so long as they are needed to complete respectively the verification of the subscriber's Member State of residence or the repeated verification of the subscriber's Member State of residence. On completion of the verification or the repeated verification of the Member State of residence the data shall be immediately and irreversibly destroyed.

Article 7

Application to existing contracts and rights acquired

1. 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 3b after that date.
2. By [2 months from the date of application of this Regulation] providers shall verify, in accordance with this Regulation, the Member State of residence of those subscribers who concluded contracts for the provision of online content services before that date. Providers referred to in Article 3b shall verify, in accordance with this Regulation, the Member State of residence of those subscribers who concluded contracts before the date on which the provider exercises the option under Article 3b, within 2 months from that date.

Article 7a

Evaluation

Three years after the date of application of this Regulation, and as required thereafter, the Commission shall assess the application of this Regulation in the light of legal, technological and economic developments, and submit to the European Parliament and to the Council a report thereon.

The report referred to in the first paragraph shall include, inter alia, an assessment of the application of the verification means of the Member State of residence, including newly developed technology, industry standards and practices, and, if necessary, consider the need for a review. The report shall pay special attention to the impact on SMEs and the protection of personal data. The Commission's report shall be accompanied, if appropriate, by a legislative proposal.

Article 8
Final provisions

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from [9 months following the day of its publication].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
