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**NOTE**

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|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| From:           | Delegation of Finland                                                                                                                                                                                                 |
| To:             | Delegations                                                                                                                                                                                                           |
| No. prev. doc.: | 7891/16                                                                                                                                                                                                               |
| No. Cion doc.:  | 15302/15+ADD 1+ADD 2                                                                                                                                                                                                  |
| Subject:        | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND<br>OF THE COUNCIL on Ensuring the Cross-Border Portability of Online<br>Content Services in the Internal Market<br>- Proposal from the Delegation of Finland |

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Delegations will find in the Annex a proposal from the Delegation of Finland to be discussed at the meeting of the Working Party on Intellectual Property (Copyright) on 18 and 19 April 2016.

**PROPOSAL FROM THE DELEGATION OF FINLAND**

These suggestions are intended to complement the Presidency compromise proposal contained in 7891/16.

*The objective of the amendments proposed below is to make the Regulation compliant with the data protection legislation, in particular the forthcoming General Data Protection Regulation.*

Nota bene: We have certain other concerns and amendments that we will put forward at the Working Group meeting on the 18<sup>th</sup> and 19<sup>th</sup> of April, some of which concern article 3B. These are not included in the proposal below, which focus on amendments related to *data protection*.

## 1. Amendments to Article 3B, paragraph 1(a) and 2 and accompanying recital 23

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~~(1a) Unless the Member State of residence can be sufficiently established on the basis of a single verification means, the provider of an online content service shall rely on a combination of such means.~~

(2) In order to comply with the obligation set out in paragraph 1, [...] the provider shall rely on one or two of the following verification means (as applicable to the type of online content service provided):

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- (i) registration on local electoral rolls, if publicly available; or
  - (j) the payment of local/poll taxes, if publicly available.
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In addition, the accompanying **recital 23** should be amended in order to clarify that the verification means *shall be reasonable also as regards the protection of personal data* and that the processing shall under all circumstances meet with the principles of data minimisation and proportionality.

### Reasoning

The amendments proposed in article 3B (2) aim at

- clarifying the scope of the obligation put on service providers and hence the permission to process personal data
- make sure that the processing of personal data is *proportional* and does not go further than what is necessary in order to meet with the obligations put on service providers.

## 2. Amendments to Article 6 and accompanying recital 24a

### Article 6

#### Protection of personal data

The processing of personal data carried out within the framework of this Regulation [...] shall be carried out in compliance with Regulation 2016/xx/EU and Directive[s 95/46/EC and] 2002/58/EC. The processing of personal data for purposes of verification under Article 3B shall be considered necessary for compliance with a legal obligation, and may be subject to further rules laid down in Union or in Member State law to which the controller is subject.

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#### Accompanying recital:

(24a) Any processing of personal data under this Regulation shall 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 95/46/EC and 2002/58/EC. In particular, service providers should ensure that any processing of personal data under this Regulation is necessary and proportionate in order to achieve the relevant purpose. The necessary technical and organisational measures may include providing transparent information to the subscribers about the methods used for the verification and its purposes as well as ensuring appropriate security measures. After the entrance into force of Regulation 2016/xx/EU (the General Data Protection Regulation) it is important that the legal basis for the data processing is clear in order to assess the legal requirements for the processing of the data. To that end the processing of personal data for purposes of verification under Article 3B shall be considered necessary for compliance with a legal obligation which falls under article 6.1 (c) of the General Data Protection Regulation and may be subject to further rules in Union or Member State law.

## Reasoning

The amendments proposed in article 6 aims at

- introducing a reference to the General Data Protection Regulation, which has been adopted by the Parliament.
  - clarify the legal basis, including the mandate to provide more specific rules, for the processing of personal data in article 3B.
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