

The Consumer Voice in Europe

## PORTABILITY OF CONTENT IN THE EUROPEAN UNION

Consumer recommendations for the trilogue negotiations



**Contact: David Martín and Frederico Silva – [digital@beuc.eu](mailto:digital@beuc.eu)**

**BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND**  
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • [www.twitter.com/beuc](http://www.twitter.com/beuc) • [consumers@beuc.eu](mailto:consumers@beuc.eu) • [www.beuc.eu](http://www.beuc.eu)  
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## Why it matters to consumers

Consumers who are abroad want to use their video or music subscriptions in the same way than they do at home. With tablets and smartphones being our constant companion, those subscriptions are meant to be used anywhere. In a Digital Single Market, there should be no digital barriers. However, due to outdated copyright rules, consumers who are abroad cannot access online content that they legally acquired at home.

### **CONSUMER RECOMMENDATIONS FOR THE TRILOGUE NEGOTIATIONS ON THE CROSS-BORDER PORTABILITY REGULATION**

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#### **1. Avoid unnecessary references to broader copyright related issues**

BEUC would like to stress that this proposal concerns only cross-border portability and it does not affect territorial licensing practices.

We believe that the inclusion of references in the regulation that are not related to portability (e.g. cross-border access, importance of the principle of territoriality in the financing of the audiovisual sector) are misplaced, might lead to legal confusion and should therefore be removed.

We consider that the Council's General Approach (in particular Recitals 4, 10 and 12) provides a good basis for compromise on this point, as it follows more closely the text and *rationale* of the Commission, which was in our opinion legally clearer.

#### **2. Include necessary references to other relevant legislation to ensure proper functioning of the legal fiction in Article 4**

The legal fiction in Article 4, which is the cornerstone of this proposal, can only work if there is a reference to the relevant legislation, notably Directive 96/9/EC<sup>1</sup>, Directive 2001/29/EC<sup>2</sup>, Directive 2006/115/EC<sup>3</sup>, Directive 2009/24<sup>4</sup> and Directive 2010/13/EU<sup>5</sup>.

If the Regulation does not refer to these Directives, it will simply preclude the proper functioning of the legal fiction. For this reason, we urge you to include all the necessary legal references in Article 4, in line with the original Commission proposal.

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<sup>1</sup> Directive 96/9/EC on the legal protection of databases

<sup>2</sup> Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

<sup>3</sup> Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property

<sup>4</sup> Directive 2009/24/EC on the legal protection of computer programs

<sup>5</sup> Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services

### **3. No time limit for portability. Definitions of 'Member State of residence' and 'temporary present'**

BEUC strongly supports that there should be **no time limit for portability**, in line with both the Council and European Parliament positions. The final compromise must maintain this element. Consumers travel abroad for different reasons (e.g. work, holidays, studies, etc.) and it would not be appropriate to set a maximum amount of days or fixed period of time for the portability of online services.

On the other hand, we consider that the addition of the wording "for a limited period of time" or any equivalent wording to the definition of 'temporary present' is redundant and not necessary. The same reasoning applies to the addition of the wording "regularly returning" or equivalent expression to the definition of 'Member State of residence'. Therefore, we urge the co-legislators to go back to the text of the Commission's proposal, which was good and sufficiently clear on these points.

### **4. Obligation to enable cross-border portability free of charge**

The regulation should clearly stipulate that portability is a consumer right which is granted free of charge, in line with the position of the European Parliament in Article 1.

### **5. Consumers who are abroad should have access to the service with the same level of quality as local subscribers**

BEUC understands that it would be too burdensome to impose any obligations in terms of the quality of the service when traveling.

However, consumers using their subscription abroad should be able to enjoy the same level of quality as local residents. This point, which is expressed in Art. 3 (2) of the European Parliament's report, should be included in the final text of the Regulation.

### **6. Possible access by the subscriber to domestic/local repertoires**

Portability should not lock-in subscribers to their home subscription catalogue. When the service provider is present in several Member States, the consumer should be able to *also* access the catalogue of the Member State where he or she is temporarily present. For this reason, BEUC supports Article 3 (1) a) of the European Parliament's report.

### **7. List of verification mechanisms**

BEUC would like to underline that the verification of the consumer's habitual residence should comply with the principle of proportionality and thus be as simple and non-invasive as possible. Unfortunately, neither the position of the European Parliament nor the position of the Council are entirely satisfactory from this perspective.

The verification of the subscriber's home should only happen once, at the time of subscription. In situations where the provider has reasonable doubts about an existing subscriber's Member State of residence, they shall be entitled to request the subscriber to provide additional information for verification. The re-verification of the Member State of residence should happen according to the same verification criteria as those required in the first place.

Any verification methods that involve constant tracking of subscribers' activities and/or are too invasive should never be accepted.

BEUC calls for the use of only one verification mechanism by default and maximum two mechanisms, if verification cannot be carried out by a single means.

Moreover, if a consumer is found benefiting from the portability of content outside of the parameters set by the Regulation, service providers should not be authorised to penalise the consumer beyond preventing him/her from accessing the service. Any possibility to demand an additional payment from the consumer would be disproportionate and unjustified.

## **8. Limitation of cross-border portability**

Any contractual provision prohibiting or limiting the right to cross-border portability shall be void, in line with Articles 3 (3) b) and 3 (3) c) of the text of the European Parliament's report.

## **9. Principle of technological neutrality**

When abroad, consumers should be allowed to access their online subscriptions on the same range and number of devices as those offered in the Member State of residence, as stated by Article 3 (3) a) of the European Parliament's position.

## **10. Entering into force within six months**

Lack of cross-border portability of online content is a consumer concern that must be addressed without undue delay. BEUC strongly supports the Commission's proposed time frame for entry into force (6 months after date of publication). In any event, it should not be longer than 12 months and nothing should prevent service providers from voluntarily offering cross-border portability, in accordance with the Regulation, before the official date of application.

END



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