



*Brussels, 30.6.2016
C(2016) 3832 final*

Dear Chairs,

The Commission would like to thank the Folketing for its Opinion on the proposal for a Regulation on ensuring the cross-border portability of online content services in the internal market {COM(2015) 627 final}.

This proposal forms part of a broader package of ambitious measures designed to create a Digital Single Market. It aims to remove barriers to cross-border portability so that the needs of users of online content services can be met more effectively while also taking into account the need to promote innovation for the benefit of consumers, service providers and right holders.

The Commission is pleased that the Folketing shares the view that action at the EU level as envisaged in the proposal is required to enable citizens to use their lawfully acquired online content services when temporarily present in another Member State.

At the same time, the Commission notes the fact that the Folketing expresses the view that certain aspects of the proposed Regulation should be clarified. The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposal and trusts that these will allay the Committees' concerns.

The Folketing finds that the framework of the proposed Regulation should ensure sufficient flexibility for right holders, consumers and service providers to negotiate agreements on cross-border solutions. The Commission is of the view that the proposed Regulation responds to this call as it provides only for the necessary elements to make the cross-border portability of online content services work in practice (such as the definition of 'temporarily present', the obligation on service providers to provide portability and the legal mechanism in Article 4 enabling the providers to comply with this obligation) while leaving other elements to contracts between the relevant parties.

*Mr Orla Hav
Chair of the
Cultural Affairs Committee
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*cc: Ms Pia KJÆRSGAARD
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The Folketing submits that the proposed Regulation seems unclear as to how providers of online content services will verify the subscriber's Member State of residence. The Commission would like to clarify that, given the fact that the proposed Regulation is to apply to online content services that offer access to a very varied content and – as mentioned above – in order to ensure sufficient flexibility for the relevant parties, the proposed Regulation does not prescribe any particular manner for verification of the subscriber's Member State of residence. Article 5 (2) of the proposed Regulation clarifies that holders of copyright and related rights or those holding any other rights in the content of online content services may require that the providers make use of means in order to verify that the online content service is provided in conformity with the rules set out by the proposed Regulation. It also sets clear boundaries for the application of such verification means: they have to be effective, reasonable and cannot go beyond what is necessary in order to achieve their purpose. In addition, recital 17 sets out examples of means which should be relied upon when verifying the Member State of residence.

The Folketing also calls for a common understanding of the notion of 'Member State of residence'. This notion is defined in the proposed Regulation as the Member State where the subscriber is habitually residing and, as mentioned above, examples as to the manner in which the Member State of residence can be verified are provided in recital 17 (for instance, the existence of a contract for internet or telephone connection).

Finally, the Folketing indicates that the notion of 'temporarily present' is not clearly defined. The Commission would like to point out that this notion is defined in Article 2 (d) of the proposed Regulation as meaning a presence of a subscriber in a Member State other than the Member State of residence. This means that as long as a subscriber is habitually residing in one Member State, such a subscriber's presence in another Member State is temporary. It was indeed the intention of the Commission to enable portability of online content services in all situations where subscribers habitually residing in one Member State are temporarily present in another Member State. Such presence in another Member State may occur from time to time or on an everyday basis (for example, when a subscriber travels to work in another Member State every day).

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council in which the Danish government is represented.

The Commission hopes that these clarifications address the issues raised by the Folketing and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Günther H. Oettinger
Member of the Commission*