



*Brussels, 12.8.2016
C(2016) 5320 final*

Dear President,

The Commission would like to thank the Camera dei Deputati 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 taking also into account the need to promote innovation for the benefit of consumers, service providers and right holders.

The Commission is pleased that the Camera dei Deputati 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 Camera dei Deputati's 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 Camera dei Deputati's concerns.

The Camera dei Deputati indicates that the notion of 'temporarily present' should be clarified. The Commission would like to point out that this notion is defined in Article 2(d) of the proposed Regulation as meaning the 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 to another Member State every day).

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The Camera dei Deputati also argues that it is appropriate to oblige providers to deliver a minimum standard of quality for cross-border portability. The Commission would be concerned that guaranteeing the minimum quality of service in other Member States could result in high costs for service providers and thus ultimately for subscribers and as such would be disproportionate. At the same time, it is important to note that any action by a service provider which would prevent the subscriber from accessing or using the service while temporarily present in a Member State (including with regard to the quality of the service) would amount to a circumvention of the obligation to enable cross-border portability and therefore would be contrary to the Regulation.

As regards the transition period, which is another matter raised by the Camera dei Deputati, the Commission acknowledged that the relevant parties may want to introduce certain arrangements in order to adapt to the new situation and provided for a six-month period to allow such arrangements to be put in place. The Commission is of the view that such a time-period is a reasonable one.

On the unenforceability of clauses that are contrary to the proposed Regulation, the Commission is of the view that it would not void the legal validity of the same clauses (or contracts in which they are incorporated) but would have the effect of parties to the given contract not being able to rely on the enforceable clause before court. This effect was deemed sufficient by the Commission in order to achieve the objective of the proposed Regulation.

Finally, the Camera dei Deputati remarks that action must be taken to prevent service providers from passing most of the costs they will incur from adapting to the new technical infrastructure onto users. The Commission would like to underline that since the proposed Regulation does not set legal requirements with regard to the quality of the service delivered in Member States other than the Member State of residence of the consumer, service providers are not obliged to adapt the technical infrastructure in order to ensure the same quality of service across borders and therefore any costs borne with regard to such adaptations are not compliance costs. At the same time, service providers (especially larger audio-visual content service providers) may see a need (for example due to reputational considerations) to adapt the technical infrastructure in order to ensure the same quality of service across borders. If service providers see a need to adapt the technical infrastructure, it might lead to more substantial costs (for example the cost of upgrading the internet connection of the origin server in terms of bandwidth or traffic volume or the cost of content delivery networks ("CDN")). However, CDN is not the only technical means to ensure the quality of video services. Some providers use the less expensive peering technologies, which use end-users' devices as content storage points. Also, the whole content delivery segment is characterised by intense technological and business innovation, meaning that the current content delivery infrastructure costs are likely to go down, and online content service providers are likely to have - depending on the nature and scale of their services - an even greater choice of content delivery options.

The proposal is currently in the legislative process involving both the European Parliament and the Council.

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

Yours faithfully,

Violeta Bulc

Member of the Commission