

(C) Main recommendations for improvements

1) Clarify the 'need to act' on the identified problem. The report should clarify under which conditions the problem of the lack of portability of online content could be solved and explain whether these conditions are currently fulfilled or not. In addition, more explanations should be provided as to why the market will not be able to solve the problem within a reasonable period of time, at a reasonable cost and/or in a uniform way, given that no evidence-based evaluation of the industry pledge ("Licences for Europe") from 2013 is presented in the report.

2) Better justify the limited range of options and scope of action. The report should better justify the limited choice of options considered in the analysis and give more reasoning behind discarding some of the options which are preferred by stakeholders (e.g. the introduction of the legal fiction without the obligation to introduce portability into the offer). For instance, it should give more explanation why it was decided not to define the 'temporary stay' and consider impacts of different definitions thereof in view of possible inquiries during the legislative process.

3) Explain in more detail the characteristics of the legal fiction. The report should be more specific about how the legal fiction, removing the legal obstacles for service providers to offer cross-border portability of online content, will be introduced in practice and what direct and indirect impacts it will have on service providers, right holders and consumers (the need to renegotiate the contracts, the associated costs, the risks of abuse, the duration of the temporary stay, etc.).

4) Strike a more sound balance in assessing impacts of options. The report should elaborate on the extent to which the proposal reaches a balance between increased cross-border portability of legally acquired online content and the limitation of fundamental rights for the consumers via increased consumer surveillance by service providers linked to the verification of the (undefined) temporary stay outside the country of residence. Moreover, the results of the targeted stakeholder consultations (workshops) conducted specifically on the issue of cross-border portability should be more explicitly reflected in the report and justification should be provided in case stakeholder views are discarded.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should present evidence in an objective and balanced way and offer a real choice for decision makers rather than promote the preferred solution.

(E) RSB scrutiny process

Reference number	2015/CNECT/022
External expertise used	No
Date of RSB meeting	28 October 2015