Council of the EU: Regulation on cross-border portability of online content services takes effect

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On 1 April 2018, the new EU Regulation on the cross-border portability of online content service (2017/1128) (Portability Regulation), adopted in June 2017, became applicable in all EU member states (see IRIS 2017-7/5). The purpose of the Portability Regulation is to ensure a common approach in the EU to the cross-border portability of online content services by ensuring that subscribers to portable online content services that are lawfully provided in their member state of residence can access and use those services when temporarily present in another member state. Thus, Article 3 of the Regulation states that the provider of an online content service provided against payment of money must enable a subscriber who is temporarily present in a member state to access and use the online content service in the same manner as when in the member State of residence, including by providing access to the same content, via the same range and number of devices, for the same number of users and with the same range of functionalities.

However, to comply with this obligation, the service providers are, under Article 5, offered a variety of means by which to verify the user's country of residence, such as payment details and IP address while ensuring that the means used are "reasonable, proportionate and effective." Given the intrusive nature of the means of verification, Article 8 provides that any data processing should be proportionate and necessary for achieving its purpose − that is to say, the verification of the user's place of residence.

Furthermore, under Article 7, contractual provisions − including (i) those between providers of online content services and holders of copyright or related rights, (ii) those holding any other rights in respect of the content of online content services, and (iii) those between such providers and their subscribers which are contrary to the Regulation (including those which prohibit the cross-border portability of online content services or which limit such portability to a specific time period) − shall be unenforceable.

Notably, under Article 9, the Regulation applies retroactively − that is to say it also applies to contracts concluded and rights acquired before the Regulation came into effect on 1 April 2018, if they are relevant after that date for the provision of, access to and use of an online content service, in accordance with

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Articles 3 and 6. In this regard, by 2 June 2018, the provider of an online content service provided against payment of money must verify the member state of residence of those subscribers who concluded contracts for the provision of the online content service before this date.

The Regulation is binding in its entirety and directly applicable in all member states. It should be noted that a Corrigendum to the Regulation has been published in the Official Journal of the European Union, which amends a number of dates contained in Articles 9, 10 and 11 in Regulation.

European Commission, Digital Single Market, Cross-border portability of online content services, 1 March 2018

https://ec.europa.eu/digital-single-market/en/cross-border-portability-online-content-services

Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market,

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1128&from=EN

Corrigendum to Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1128R(01)

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