

JOINT SESSION OF PARLIAMENTARY COMMITTEES OF ITALY'S CHAMBER OF DEPUTIES

Committee on Transport, Post and Telecommunications

and

Committee on Industry, Trade and Tourism

Proposal for a Regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market (COM(2015) 627 final)

APPROVED FINAL DOCUMENT

The Committee on Transport, Post and Telecommunications and the Committee on Industry, Trade and Tourism of Italy's Chamber of Deputies,

having examined, pursuant to Rule of Procedure No. 127 of the Chamber of Deputies, the Proposal for a Regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market (COM(2015) 627 final),

whereas:

The rapid uptake of online content services and the increasing use of portable devices makes it necessary to ensure that these services can be used across national borders;

Many obstacles, most of them caused by the commercial practices of service providers, still stand in the way of the delivery of digital content services to consumers who are temporarily based in another Member State;

The main obstacle to cross-border portability, therefore, lies in the contractual terms imposed by online service providers on their subscribers, which, in turn, reflect the territorial restrictions embedded in the agreements between the service providers and right holders;

The proposal aims to make online content services portable, and would require the provider of digital content to allow a subscriber who is temporarily located in a Member State to access and use the content;

The proposal takes on board a number of concerns signalled by stakeholders: it does not impose a duty to provide portability on those service providers that deliver services free of charge and without authentication of the consumer's Member State of residence; it does not oblige service providers to deliver the service across borders with the same quality in the delivery as in the Member State of residence; and it leaves it up to the parties to agree on the conditions for ensuring that the service is provided in accordance with the Regulation;

As regards the localisation of the service and compliance with the laws on copyright, the proposal is that service delivery, access and use should be deemed as having occurred in the Member State of residence of the subscriber, even if the latter is temporarily present in another Member State;

Under the proposed Regulation any contractual clauses between right holders and service providers or between service providers and subscribers that are designed to prohibit or limit the cross-border portability of online content services would be unenforceable;

Mindful that the present Final Document needs to be forwarded without delay to the European Commission as part of the political dialogue, as well as to the European Parliament and the Council;

express their favourable opinion

with the following remarks:

- a) To avoid uncertainty in the application of the Regulation, which could lend itself to different interpretations in different Member States and thus subvert the goal of a common approach, the question of what constitutes a "temporary" presence in a Member State other than that of residence needs to be unambiguously clarified;
- b) It is appropriate to oblige providers to deliver a minimum standard of quality for cross-border portability, even if the standard is lower than that offered in the country of residence;

- c)* Given that the Regulation will apply also to contracts and rights acquired before the date of its entry into force, it is appropriate in respect of contracts and rights that are already in place to provide for a transitional period of at least 12 months, during which providers may adapt to the proposed innovations;

- d)* It needs to be verified whether the unenforceability of those contractual clauses that conflict with the Regulation would void the legal validity of the same clauses;

- e)* In any case, 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.