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► B 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
(Text with EEA relevance)
(OJ L 168, 30.6.2017, p. 1)

Corrected by:

► C1 Corrigendum, OJ L 198, 28.7.2017, p. 42 (2017/1128)



**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
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Article 1

Subject matter and scope

1. This Regulation introduces a common approach in the Union to the cross-border portability of online content services, by ensuring that subscribers to portable online content services which are lawfully provided in their Member State of residence can access and use those services when temporarily present in a Member State other than their Member State of residence.

2. This Regulation shall not apply to the field of taxation.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘subscriber’ means any consumer who, on the basis of a contract for the provision of an online content service with a provider whether against payment of money or without such payment, is entitled to access and use such service in the Member State of residence;
- (2) ‘consumer’ means any natural person who, in contracts covered by this Regulation, is acting for purposes which are outside that person’s trade, business, craft or profession;
- (3) ‘Member State of residence’ means the Member State, determined on the basis of Article 5, where the subscriber has his or her actual and stable residence;
- (4) ‘temporarily present in a Member State’ means being present in a Member State other than the Member State of residence for a limited period of time;
- (5) ‘online content service’ means a service as defined in Articles 56 and 57 TFEU that a provider lawfully provides to subscribers in their Member State of residence on agreed terms and online, which is portable and which is:
 - (i) an audiovisual media service as defined in point (a) of Article 1 of Directive 2010/13/EU, or
 - (ii) a service the main feature of which is the provision of access to, and the use of, works, other protected subject-matter or transmissions of broadcasting organisations, whether in a linear or an on-demand manner;

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- (6) ‘portable’ means a feature of an online content service whereby subscribers can effectively access and use the online content service in their Member State of residence without being limited to a specific location.

*Article 3***Obligation to enable cross-border portability of online content services**

1. The provider of an online content service provided against payment of money shall enable a subscriber who is temporarily present in a Member State to access and use the online content service in the same manner as in the Member State of residence, including by providing access to the same content, on the same range and number of devices, for the same number of users and with the same range of functionalities.

2. The provider shall not impose any additional charges on the subscriber for the access to and the use of the online content service pursuant to paragraph 1.

3. The obligation set out in paragraph 1 shall not extend to any quality requirements applicable to the delivery of an online content service that the provider is subject to when providing that service in the Member State of residence, unless otherwise expressly agreed between the provider and the subscriber.

The provider shall not take any action to reduce the quality of delivery of the online content service when providing the online content service in accordance with paragraph 1.

4. The provider shall, on the basis of the information in its possession, provide the subscriber with information concerning the quality of delivery of the online content service provided in accordance with paragraph 1. The information shall be provided to the subscriber prior to providing the online content service in accordance with paragraph 1 and by means which are adequate and proportionate.

*Article 4***Localisation of the provision of, access to and use of online content services**

The provision of an online content service under this Regulation to a subscriber who is temporarily present in a Member State, as well as the access to and the use of that service by the subscriber, shall be deemed to occur solely in the subscriber’s Member State of residence.

*Article 5***Verification of the Member State of residence**

1. At the conclusion and upon the renewal of a contract for the provision of an online content service provided against payment of money, the provider shall verify the Member State of residence of the subscriber by using not more than two of the following means of verification and shall ensure that the means used are reasonable, proportionate and effective:

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- (a) an identity card, electronic means of identification, in particular those falling under the electronic identification schemes notified in accordance with Regulation (EU) No 910/2014 of the European Parliament and of the Council⁽¹⁾, or any other valid identity document confirming the subscriber's Member State of residence;
- (b) payment details such as the bank account or credit or debit card number of the subscriber;
- (c) the place of installation of a set top box, a decoder or a similar device used for supply of services to the subscriber;
- (d) the payment by the subscriber of a licence fee for other services provided in the Member State, such as public service broadcasting;
- (e) an internet or telephone service supply contract or any similar type of contract linking the subscriber to the Member State;
- (f) registration on local electoral rolls, if the information concerned is publicly available;
- (g) payment of local taxes, if the information concerned is publicly available;
- (h) a utility bill of the subscriber linking the subscriber to the Member State;
- (i) the billing address or the postal address of the subscriber;
- (j) a declaration by the subscriber confirming the subscriber's address in the Member State;
- (k) an internet protocol (IP) address check, to identify the Member State where the subscriber accesses the online content service.

The means of verification under points (i) to (k) shall only be used in combination with one of the means of verification under points (a) to (h), unless the postal address under point (i) is included in a publicly available official register.

2. If the provider has reasonable doubts about the subscriber's Member State of residence in the course of the duration of the contract for the provision of an online content service, the provider may repeat the verification of the Member State of residence of the subscriber, in accordance with paragraph 1. In such a case, however, the means of verification under point (k) may be used as a sole means. Data resulting from the use of the means of verification under point (k) shall be collected in binary format only.

⁽¹⁾ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

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3. The provider shall be entitled to request the subscriber to provide the information necessary to determine the subscriber's Member State of residence in accordance with paragraphs 1 and 2. If the subscriber fails to provide that information, and as a result the provider is unable to verify the subscriber's Member State of residence, the provider shall not, on the basis of this Regulation, enable the subscriber to access or use the online content service when the subscriber is temporarily present in a Member State.

4. The holders of copyright or related rights or those holding any other rights in the content of an online content service may authorise the provision of, access to and use of their content under this Regulation without verification of the Member State of residence. In such cases, the contract between the provider and the subscriber for the provision of an online content service shall be sufficient to determine the subscriber's Member State of residence.

The holders of copyright or related rights or those holding any other rights in the content of an online content service shall be entitled to withdraw the authorisation given pursuant to the first subparagraph subject to giving reasonable notice to the provider.

5. The contract between the provider and the holders of copyright or related rights or those holding any other rights in the content of an online content service shall not restrict the possibility for such holders of rights to withdraw the authorisation referred to in paragraph 4.

*Article 6***Cross-border portability of online content services provided without payment of money**

1. The provider of an online content service provided without payment of money may decide to enable its subscribers who are temporarily present in a Member State to access and use the online content service on condition that the provider verifies the subscriber's Member State of residence in accordance with this Regulation.

2. The provider shall inform its subscribers, the relevant holders of copyright and related rights and the relevant holders of any other rights in the content of the online content service of its decision to provide the online content service in accordance with paragraph 1, prior to providing that service. The information shall be provided by means which are adequate and proportionate.

3. This Regulation shall apply to providers that provide an online content service in accordance with paragraph 1.

*Article 7***Contractual provisions**

1. Any contractual provisions, including those between providers of online content services and holders of copyright or related rights or those holding any other rights in the content of online content services, as well as those between such providers and their subscribers, which are contrary to this Regulation, including those which prohibit cross-border portability of online content services or limit such portability to a specific time period, shall be unenforceable.

2. This Regulation shall apply irrespective of the law applicable to contracts concluded between providers of online content services and holders of copyright or related rights or those holding any other rights in the content of online content services, or to contracts concluded between such providers and their subscribers.

*Article 8***Protection of personal data**

1. The processing of personal data carried out within the framework of this Regulation including, in particular, for the purposes of verification of the subscriber's Member State of residence under Article 5, shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC. In particular, the use of the means of verification in accordance with Article 5 and any processing of personal data under this Regulation, shall be limited to what is necessary and proportionate in order to achieve its purpose.

2. Data collected pursuant to Article 5 shall be used solely for the purpose of verifying the subscriber's Member State of residence. They shall not be communicated, transferred, shared, licensed or otherwise transmitted or disclosed to holders of copyright or related rights or to those holding any other rights in the content of online content services, or to any other third parties.

3. Data collected pursuant to Article 5 shall not be stored by the provider of an online content service longer than necessary to complete a verification of a subscriber's Member State of residence pursuant to Article 5(1) or (2). On completion of each verification, the data shall be immediately and irreversibly destroyed.

*Article 9***Application to existing contracts and rights acquired**

1. This Regulation shall apply also to contracts concluded and rights acquired before the date of its application if they are relevant for the provision of, access to and use of an online content service, in accordance with Articles 3 and 6, after that date.

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2. ►**C1** By 2 June 2018 ◄, the provider of an online content service provided against payment of money shall verify, in accordance with this Regulation, the Member State of residence of those subscribers who concluded contracts for the provision of the online content service before that date.

Within two months of the date upon which the provider of an online content service provided without payment of money first provides the service in accordance with Article 6, the provider shall verify, in accordance with this Regulation, the Member State of residence of those subscribers who concluded contracts for the provision of the online content service before that date.

*Article 10***Review**

►**C1** By 2 April 2021 ◄, and as required thereafter, the Commission shall assess the application of this Regulation in the light of legal, technological and economic developments, and submit to the European Parliament and to the Council a report thereon.

The report referred to in the first paragraph shall include, inter alia, an assessment of the application of the verification means of the Member State of residence referred to in Article 5, taking into account newly developed technologies, industry standards and practices, and, if necessary, consider the need for a review. The report shall pay special attention to the impact of this Regulation on SMEs and the protection of personal data. The Commission's report shall be accompanied, if appropriate, by a legislative proposal.

*Article 11***Final provisions**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. ►**C1** It shall apply from 1 April 2018. ◄

This Regulation shall be binding in its entirety and directly applicable in all Member States.