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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council

to ensure the cross-border portability of online content services in the internal market

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Executive Summary Sheet

Impact assessment on cross-border portability of online content services in the internal market

A. Need for action

Why? What is the problem being addressed? Maximum 11 lines

Many Europeans subscribe to online content services or acquire content online (transactional services). Typically, they can access the services/content via mobile devices. However, often they cannot do so while travelling in Europe. This is the case for most online audiovisual and premium sports content. Currently, cross-border portability seems to be possible in the case of online music services and in the e-book and video game sectors, however the emergence of restrictions in the future cannot be excluded. The projected growth of online content services, notably subscription-based services, the increasing mobile use of content and the high interest in cross-border portability by young Europeans indicate that the scale of the problem is likely to mount over time. The problem is driven by territorial limits of the services concerned resulting from the licensing practices of right holders and/or the commercial choices of service providers themselves. Of all stakeholder groups, this problem mainly affects right holders, including the holders of copyright, related rights and of sports rights, online content service providers and consumers.

What is this initiative expected to achieve? Maximum 8 lines

The initiative is expected to ensure the cross-border portability of online content services by removing the barriers that currently prevent consumers staying temporarily in other Member States from using the services they have previously subscribed to or from accessing the content they have previously purchased or rented. The initiative is expected to result in online content service providers offering the cross-border portability systematically and in all content sectors as well as in a greater number of consumers actually accessing the services/content while staying temporarily in other Member States.

What is the value added of action at the EU level? Maximum 7 lines

Due to the inherent cross-border nature of the problem and to the existence of a harmonised copyright framework, intervention by Member States would not be possible. The market may be able to address the problem gradually to some extent, but this would result in diverse (contractually agreed) portability conditions for consumers and, most probably, only parts of the content offered by service providers would be portable (depending on the licence). In contrast, the EU action would provide (i) clarity that online content services can be accessed while abroad, (ii) harmonised conditions for cross-border portability and (iii) full access for consumers to the online services they have subscribed to and the content they have previously purchased or rented.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why? Maximum 14 lines

The 3 policy options considered are guidance, legislation to facilitate cross-border portability or legislation to ensure it. Guidance would encourage right holders to grant the rights allowing for cross-border portability when issuing licences, and would encourage online content service providers to enable cross-border portability of their services across the EU. Legislation to facilitate or ensure cross-border portability would locate the provision of the online content service in the Member State of consumer's residence. Legislation to ensure cross-border portability would, in addition, oblige online content service providers to offer the cross-border portability feature to their customers. Legislation to ensure cross-border portability is the preferred option. Several factors explain this preference: (i) the lack of tangible progress in implementing the audiovisual and sports industries' "Licences for Europe" pledge to "continue to work towards the further development of cross-border portability"; (ii) our assessment that the hurdles of reviewing the complex network of licensing agreements and defining conditions of portability (e.g. authentication) in an uniform manner would be too important for an industry-led approach to succeed; (iii) the likely slow and heterogeneous evolution in the scenario of legislation to facilitate portability, since contracts between right holders and service providers could still override or limit the facilitation mechanism, and service providers would be free not to offer or limit cross-border portability for consumers.

Who supports which option? Maximum 7 lines

Consumer representatives support the legislative intervention to ensure cross-border portability as it will deliver concrete consumer benefits across the EU. Different categories of right holders (e.g. film producers and distributors, sport organisations) see portability as a valid policy objective, but, generally, would prefer guidance due to its less intrusive nature. Many online content service providers support industry-led approaches too.

Recently the views of service providers and parts of the content industry have evolved in the direction of supporting a legislative intervention, provided that the instrument establishes appropriate safeguards and leaves sufficient flexibility for the market to evolve. A growing number of Member States support legislative action too.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)? Maximum 12 lines

For consumers the preferred option would mean better online content services, responding to their mobility needs, within a short timeframe. According to our estimation, the share of "portable users" of online subscription services will grow from 5.7% of European consumers in 2015 to 14% by 2020, meaning around 72 million people in Europe. For online content service providers the main benefit would be opening up the possibility to offer cross-border portability without incurring significant transaction costs related to renegotiation of licensing agreements with right holders. For right holders, the preferred option would not undermine the territory-by-territory content distribution strategies while it would reduce their transaction costs to enable cross-border portability by removing the need to re-negotiate licensing agreements across Europe (without the intervention, the agreements covering both the "home" country and potential visited countries would have to be changed).

What are the costs of the preferred option (if any, otherwise main ones)? Maximum 12 lines

Online content service providers may bear some cost deriving from the preferred option. The direct costs would be marginal and relate to the re-configuring of the user authentication system from the geo-blocking approach to the temporary access approach. They would be absorbed in the routine software maintenance costs of service providers. Two types of indirect costs could be envisaged too: (i) additional authentication/verification requirements from right holders, e.g. cross-checks between the domestic and portable uses of the service by the same consumer in order to avoid abuse; (ii) even if not required to do so by the legislative intervention, some online content service providers, notably those in the audiovisual and sports sectors, might see a need (e.g. due to reputational considerations) to adapt the technical infrastructure in order to ensure the same quality of service across borders. Additional authentication/verification requirements would result in marginal extra cost. Adapting content delivery infrastructure might be more expensive, but those costs are difficult to estimate as they would depend on several parameters: the current practices of online service providers, the volume of data transferred and stored as well as the technological solutions chosen.

How will businesses, SMEs and micro-enterprises be affected? Maximum 8 lines

Full application to SMEs (including micro-enterprises) is envisaged. While the costs described above may put proportionally more burden on SMEs than on large businesses, the negative consequence of exempting SMEs for SMEs themselves are likely to outweigh the savings in costs: as consumers become increasingly aware of the requirement to provide cross-border portability, they are likely to start seeing it as a "must-have" feature of online content services, and the inability of SMEs to provide portability might result in a serious competitive disadvantage. Moreover, exempting SMEs from the scope of the rules is likely to undermine the efficiency of the measure, considering that a lot of online content service providers are SMEs.

Will there be significant impacts on national budgets and administrations? Maximum 4 lines

The impacts would depend on the chosen instrument. A regulation would not require the MSs to work on the transposition. If the chosen instrument is a directive, MSs would have to prepare the implementing legislation within the set transposition deadline. Beyond this, no impacts on national budgets or administrations are envisaged.

Will there be other significant impacts? Max 6 lines

No. In particular, the preferred option would have a limited impact on copyright as property right or on the freedom to conduct a business, as recognised in the European Charter of Fundamental Rights (Articles 16 and 17). Also, it would be justified in view of the Treaty fundamental freedom to provide and receive services across borders. The verification of temporary stay could affect consumers' right to the protection of personal data (Article 8 of the Charter) and would be applied with the necessary safeguards. The chosen option would be proportionate and not go beyond what is necessary to achieve the objective.

D. Follow up

When will the policy be reviewed? Maximum 4 lines

The impacts of the EU intervention will be monitored from the time of the adoption of the legislative instrument. A comprehensive evaluation would take place 5 years after the start of application of the rules.