

THE FEDERATION OF GERMAN CONSUMER ORGANISATIONS WELCOMES THE PROPOSAL FOR A PORTABILITY REGULATION

The Federation of German Consumer Organisations, *Verbraucherzentrale Bundesverband* (vzbv), welcomes the European Commission proposal on the cross-border portability of online content services: if implemented in its current form, this regulation will provide tangible improvements for subscribers to digital content services.

In particular, vzbv is in favour of the Commission's decision not to set a time limit for the use of services in other EU Member States: there are a variety of reasons why consumers may temporarily be elsewhere in the EU than their home country, including for work, holiday, or studying abroad programmes such as Erasmus. As such, limiting portability to a specified number of days would not be adequate.

vzbv also shares the Commission's views that this can only be a first step as, from the perspective of consumers, a common market ought to make it possible to access a range of content from all Member States across borders. It is important to stress this issue to make sure that rightholders do not misconstrue this proposal as a sort of deal which will, so to speak, "get them off the hook in this whole geoblocking business"; otherwise, there is a risk that the fundamental challenge of improving cross-border access to as many types of content as possible will be neglected. It is important to bear in mind that this proposal is, in fact, about little more than achieving a state of affairs which should, by rights, already be the case: it ought to be beyond question that consumers have the right to use online content services such as Netflix, for which they have already paid, in EU countries other than their own.

What follows are preliminary reactions from vzbv, listed in seven points:

1. **Methods of authentication for online content service providers (Article 5 (2)):**
While vzbv does not question the fact that service providers must have the means to check whether users are accessing the service from another EU country on a temporary basis only, this should not lead to situations in which, for instance, a German consumer is unable to subscribe to a service, using its Belgian credit card. The existing privileges of the European Single Market must not be undermined. The very minimum which should be ensured here is that a combination of criteria is used to authenticate users: i.e. in our example, besides the credit card, other factors such as the location of the IP address should be included to make sure that **consumers are not prematurely prevented from accessing services or discriminated against based on their personal circumstances.**
2. In order to make sure that consumers have genuinely comprehensive access to online content services, cross-border portability should be extended to cover **open access** services (e.g. media players run by public service broadcasters), i.e.

without the need for there to be a contractual relationship between provider and consumer. This aim should be supported by continuing efforts to harmonise copyright laws across Member States, especially as part of the **revision of the Satellite and Cable Directive currently** taking place.

3. Some consumers may ordinarily reside in more than one Member State only; these consumers should **not be forced to select one single Member State as their “country of residence”** and be tied to service providers in that country, or prevented from using service providers in another. This provision should be made abundantly clear in the text of the regulation.
4. The **principle of technological neutrality** should be expressly anchored in the regulation so that consumers are guaranteed a free choice of end devices and transmission methods when accessing online content services.
5. Both the quality of transmission and the amount of data available are increasing, especially in terms of mobile internet, on which online content services can also be used. As a result, measures should be taken to ensure that **exercising the right to portability does not trap consumers into extra payments**. The ‘fair use’ roaming rules currently under development by BEREC to prevent abuse of roaming services should not lead to situations in which consumers are *de facto* unable to use online content services. Such a situation would run contrary to the principle of ‘roam like at home’.
6. Online content service providers should give consumers pre-contractual information **in a clear and comprehensible manner** about the quality of service in other EU countries (article 3); effective implementation of portability must be ensured.
7. In order to maintain the **coherence** of European Union law both the content and the lexicology of the various items of legislation of the digital single market currently under preparation should be harmonised.

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