



# First feedback from the implementation of the Portability Regulation by free online video services

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**First feedback from the implementation of the Portability Regulation by free online video services**

European Audiovisual Observatory (Council of Europe), Strasbourg, July 2019

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# 1. Introduction

## 1.1. About this note

The Regulation (EU) 2017/1128 on cross-border portability of online content services in the internal market<sup>1</sup> (June 2017), also known as “the Portability Regulation” became applicable on 1st April 2018<sup>2</sup>.

The Portability Regulation enables consumers to access their portable online content services when they travel in the EU in the same way they access them at home. Its main provisions are the following:

- the obligation to provide cross-border portability for paid online services;
- the verification of the Member State of residence of the subscriber by these services by using not more than two means of verification among the ones identified in the Regulation;
- the principle that the provision of, access to and use of an online content service by a user who is temporarily present in a Member State abroad shall be deemed to occur solely in the user’s Member State of residence (the ‘legal fiction’).

The Regulation also includes the possibility for the providers of free online video services to opt for making use of the new portability rules, notably as regards the legal fiction as described above, provided that they verify the user’s Member State of residence and comply with the same obligations as those imposed by the Regulation upon the providers of paid online content services.

For free online video services, the Portability Regulation can be the means to better serve their users by maintaining their access when they are abroad, and therefore aligning with the level of service that subscribers to paid services are benefitting from. However, it may in some cases imply the introduction of additional identification measures that could make the access to the services more complex, and therefore could negatively impact the usage of the service.

The European Commission is interested in knowing to what degree the Regulation is being implemented by free online video services and has entrusted the European Audiovisual Observatory with the present study. This note aims to answer the following questions:

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<sup>1</sup> <https://ec.europa.eu/digital-single-market/en/cross-border-portability-online-content-services>

<sup>2</sup> The Portability Regulation will entry into force in the EEA EFTA States (Iceland, Liechtenstein and Norway) on August 1<sup>st</sup>, 2019



- Which audiovisual services have opted in and implemented the Regulation or consider implementing it?
- What are the technical modalities of implementation, in particular in terms of identification of users?
- Which hurdles are faced by the services when implementing or considering the implementation?
- What is the impact of the implementation?

## 1.2. Methodology

This note is based on the analysis of a sample of free online video services. The analysis went through two steps:

- A desk research of the online offers of 50+ free online video services.
- Questionnaire sent to 50+ services and filled in by a total of 25 services.

The results presented in this note are based on the information provided by the 25 services (only broadcasters) which replied to the questionnaire. They cannot be extrapolated to draw overall conclusions on the implementation of the Portability Regulation by free online video services.

The sample of free online video services has been built combining several criteria:

- Online video services providing more than trailers
- Country where the service is established
- Public and private services
- Broadcasters and “pure players”

The sample included the following 52 services:



**Table 1. List of EU free online video services covered in the study**

Country	Name of service	Service Provider	Category of service provider	Statute
AT	ORF Tvthek	ORF	Broadcaster	Public
BE	rtbf.be	RTBF	Broadcaster	Public
BE	VRT NU	VRT	Broadcaster	Public
BE	vtm.be	VTM	Broadcaster	Private
BG	bnt.bg	BNT	Broadcaster	Public
BG	btvplus	BTV (bTV)	Broadcaster	Private
CY	cybc.com	CYBC	Broadcaster	Public
CZ	ceskatelevize.cz	CT	Broadcaster	Public
CZ	Prima Play	Prima Televize	Broadcaster	Private
DE	7TV	Pro7	Broadcaster	Private
DE	Das Erste Mediathek	ARD	Broadcaster	Public
DE	TV NOW	RTL	Broadcaster	Private
DE	Zattoo	Zattoo	Online service	Private
DE	ZDF Mediathek	ZDF	Broadcaster	Public
DK	dr.dk	DR	Broadcaster	Public
DK	TV2 Play	TV2	Broadcaster	Public
EE	err.ee	ERR	Broadcaster	Private
ES	Atresplayer	Atresmedia	Broadcaster	Public
ES	eitb.eus	Euskal Telebista	Broadcaster	Private
ES	Mitele	Mediaset ES	Broadcaster	Public
ES	TVE a la carta	TVE1 (RTVE)	Broadcaster	Public
FI	Areena	YLE	Broadcaster	Private
FR	6Play	M6 (RTL Group)	Broadcaster	Public
FR	france-tv	France Télévisions	Broadcaster	Public
FR	Molotov	Molotov	Online service	Private
FR	MyTF1	TF1	Broadcaster	Private
GB	iPlayer	BBC One	Broadcaster	Public
GB	iTV Hub	ITV1	Broadcaster	Private
GR	ERT WebTV	ERT	Broadcaster	Public
HR	hrti.hr	HRT	Broadcaster	Public
HR	NovaPlus	NOVA	Broadcaster	Private



Country	Name of service	Service Provider	Category of service provider	Statute
HU	mediaklikk	MTVA	Broadcaster	Public
HU	tv2.hu	TV2	Broadcaster	Private
IE	RTE Player	RTE	Broadcaster	Public
IT	Mediaset Play	Mediaset IT	Broadcaster	Private
IT	RAI Play	RAI	Broadcaster	Public
IT	Rivedila7	La 7	Broadcaster	Private
LT	lrt.lt	LRT	Broadcaster	Public
LU	RTL.LU	RTL	Broadcaster	Private
LV	Re!	LTV	Broadcaster	Public
MT	TVMi	PBS	Broadcaster	Public
NL	NPO Start	NPO	Broadcaster	Public
PL	TVN Player	TVN	Broadcaster	Private
PL	TVP VOD	TVP	Broadcaster	Public
PT	RTP Play	RTP	Broadcaster	Public
PT	SIC On Demand	SIC	Broadcaster	Private
PT	TVI Player	TVI	Broadcaster	Private
RO	TVR+	TVR	Broadcaster	Public
SE	Play	SVT	Broadcaster	Public
SE	TV4Play	TV4	Broadcaster	Private
SI	RTVSLO	RTV	Broadcaster	Public
SK	rtv:	RTV	Broadcaster	Public



## 2. Early days of implementation

### 2.1. The context

This note shows that a relatively low number of free online video services have already implemented the Portability Regulation. Several factors have to be taken into account in this regard, linked on the one hand to the fact that the Regulation is recent, on the other hand to on-going deep changes in the online video market.

#### 2.1.1. Too early to tell

Only little more than 12 months have passed since the Regulation became applicable and many of the players have not yet decided whether or not to implement the Portability Regulation. The replies collected show indeed that technicalities are not to be underestimated, and therefore that time is needed to assess the opportunity offered by the Portability Regulation and its implementation in practice. In that regard, several services have suggested the idea to fill in the questionnaire at a later stage as they will have more feedback by then.

#### 2.1.2. An industry in flux

The growing demand for non-linear, serialised content has influenced traditional broadcasters' strategies. The audience shift from linear to on-demand has forced traditional players to strengthen the online services and to fill their catalogues with more fiction hours.

The market of digital distribution of audiovisual content is in evolution and has not stabilised yet. This lack of stability may explain to a certain extent the slow implementation of portability by free online video services.

To mention one example regarding the current developments in the audiovisual market, to counter the domination of US players (Netflix and Amazon alone hold 79% of



the EU Subscription Video-On-Demand market in number of subscriptions<sup>3</sup>), several partnerships have been announced in Europe:

- In France, TF1, M6 and France Télévisions announced in June 2018 the launch of Salto<sup>4</sup>, a SVOD platform equally owned by the three and offering original content and exclusive premieres. They have invited other French broadcasters to join with their contents. Although Salto is a paid service, it may impact the free online video services of its promoters.
- In Germany, also in June 2018, the free online video service 7TV was announced as a partnership between ProSieben and Discovery Communications<sup>5</sup> but willing to gather all German broadcasters on board<sup>6</sup>. SPORT1, WELT and N24 Doku channels have already brought their live and catch-up contents as non-shareholders content owners; but Mediengruppe RTL Deutschland has already declared that it will not be joining.
- In Spain, public broadcaster RTVE and private groups Atresmedia and Mediaset España launched in April 2019 LovesTV<sup>7</sup>, a joint HbbTV-based platform available on Smart TVs supposed to evolve to become a joint OTT service. Digital and accessible through satellite, LovesTV offers more contents than their respective online services (notably for RTVE). Here also, the partners have announced that the service is open to other partners.
- In the United Kingdom Britbox launched in March 2017. It is a SVOD service owned by BritBox LLC, a joint venture of BBC Studios and ITV. It is focused on British television contents from both channels, available in US and Canada.

In the United Kingdom, the context of uncertainty related to the Brexit<sup>8</sup> has, among other things, led the Intellectual Property Office (IPO) to launch a consultation process beginning of 2018<sup>9</sup>, whose results point out the concerns of UK services, notably those having used resources to implement portability, if they were forced to invest in reverting it with a no-deal Brexit.<sup>10</sup>

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<sup>3</sup> Source: MAVISE.

<sup>4</sup> <http://www.lefigaro.fr/medias/2018/06/14/20004-20180614ARTFIG00253-france-televisions-m6-et-tf1-s-apprentent-a-lancer-une-plateforme-de-svod.php>

<sup>5</sup> <https://www.digitaltveurope.com/2018/06/25/discovery-and-prosiebensat-1-team-up-for-major-german-ott-tv-plan/>

<sup>6</sup> <https://www.v-net.tv/2018/03/23/7tv-wants-all-german-broadcasters-to-gather-under-one-online-roof-to-counter-amazon-and-netflix/>

<sup>7</sup> <https://www.digitaltveurope.com/2018/11/29/lovestv-launches-in-spain/>

<sup>8</sup> <https://www.bbc.com/news/technology-43581894>

<sup>9</sup> <https://www.gov.uk/government/news/cross-border-portability-of-online-content-services>

<sup>10</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690128/DPS-007149-Cross-border-portability-of-online-content-services-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690128/DPS-007149-Cross-border-portability-of-online-content-services-response.pdf)



## 2.2. Where does portability of free online video services stand?

The desk research and the interviews showed that 13 services from the sample have implemented, are working on the implementation or are considering adopting the Portability Regulation:

**Table 2. Number of services by level of implementation of portability**

Implemented	Not implemented			
In place	In preparation	Considering	Not considering	n/a
4	2	7	12	27

*Note: n/a corresponds to services for which the desk research showed evidence of no implementation of the regulation and which did not answer to the request for interview.*

The following services have implemented, are working on the implementation or are considering adopting the Portability Regulation:

**Table 3. Services having implemented or considering portability**

Country	Name of service	Service Provider	Category of service	Statute	Adopted Portability
BE	rtbf.be	RTBF	Broadcaster	Public	In place
BE	VRT NU	VRT	Broadcaster	Public	In place
FI	Areena	YLE	Broadcaster	Public	In place
PL	TVP VOD	TVP	Broadcaster	Public	In place
EE	err.ee	ERR	Broadcaster	Public	In preparation
SI	RTVSLO	RTV	Broadcaster	Public	In preparation
DK	dr.dk	DR	Broadcaster	Public	Considering
ES	A la carta	RTVE	Broadcaster	Public	Considering
HR	hrti.hr	HRT	Broadcaster	Public	Considering
HU	mediaklikk	MTVA	Broadcaster	Public	Considering
PT	RTP Play	RTP	Broadcaster	Public	Considering
SE	Play	SVT	Broadcaster	Public	Considering



Country	Name of service	Service Provider	Category of service	Statute	Adopted Portability
SE	TV4Play	TV4	Broadcaster	Private	Considering

The vast majority of the services having implemented, preparing or considering portability are online services of public broadcasters.



## 3. Rationales for implementing or not implementing portability

### 3.1. Overview

Several arguments have been put forward regarding the rationales for implementing or not implementing the Portability Regulation. The following two tables summarise the main pros and cons.

**Table 4. Rationale for implementing portability**

What was the rationale to implement portability?	In place	In preparation	Considering <sup>11</sup>	Tot.
Satisfy demand from users; comfort of users travelling abroad; connecting with young audiences	2	2	2	6
Provide better public service	2	2	1	5
Keeping up with European standards	2			2
Providing an added value to encourage users to register/log in	1		1	2
Levelling with competition (paid-for subscription services)	1			1
<b>Total</b>	<b>8</b>	<b>4</b>	<b>4</b>	<b>16</b>

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<sup>11</sup> The services “considering portability” have been included in the two tables as they have brought forward both pros and cons.

**Table 5. Rationale for not implementing portability**

For which reasons are you not considering the implementation of portability?	Considering <sup>12</sup>	Not considering	Tot.
Verification issues (not having a login in place; legal/operational problems to implement Article 6.1 <sup>13</sup> ; risk of discouraging users by imposing a login scheme; privacy concerns)	7	7	14
Not a priority (lack of demand; other priorities; priority given to paid service; costs / benefit ratio not convincing)	3	9	12
Not interesting for business model (most of catalogue available globally; prioritising paid service for premium contents; strategy to secure more rights for the online service before implementing portability).	1	7	8
Worry of possible demand for additional remuneration from rightholders/collective rights management organisations	1	2	3
Operational problems to implement Article 6.2 <sup>14</sup> (informing users and right holders)	2	0	2
No clear cost/benefits (concerns about losing revenues obtained from selling rights to own programmes abroad; limited ad-revenue potential)	0	2	2
Waiting for several added values that together with Portability will justify the costs / the obligation to login	1	0	1
<b>Total</b>	<b>15</b>	<b>27</b>	<b>42</b>

## 3.2. Meeting the demand from users

There is a perception among free online video services that there is, to an extent, a demand from their users to access their services from abroad. Free online video services also seem to consider that usage will build up over time once users are made aware of

<sup>12</sup> The services “considering portability” have been included in the two tables as they have brought forward both pros and cons.

<sup>13</sup> Article 6.1 of the Regulation (EU) 2017/1128: 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.

<sup>14</sup> Article 6.2 of the Regulation (EU) 2017/1128: 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 portability feature. It should be noted that online services may have different opinions on the level of demand based on the country where they are established: the share of citizens traveling abroad can indeed significantly differ between countries.

Several services also mentioned that they are keen to keep on connecting with younger users, and that these younger users would be particularly keen on having access when traveling in other EU Member States.

Finally, whatever the actual level of demand, public service broadcasters tend to believe that providing access to their content and services to citizens in any circumstance is part of their remit, and that portability is one of the ways to achieve this objective.

### **3.3. The opportunity to better know the users**

Improving the knowledge of their user base is key for online service providers. Identifying the users (provided they consent to be identified) improves the selection of programmes that can be recommended to a particular user. Combined with additional data, it can also pave the way for targeted advertising.

Implementing portability can precisely be a way to encourage users to accept a login system (which is in practice necessary in view of the service's obligation to verify the user's Member State of residence) to use free online video services. Providing access to the service when traveling abroad can indeed be used as an incentive for mandatory registration<sup>15</sup>.

### **3.4. Staying on par with paid online services**

The Portability Regulation is mandatory for paid online services. For the subscribers to these paid services, portability could therefore be considered as an obvious feature of any online video service. Free online video services may want to offer a similar level of service than the paid-services.

However, some providers of both paid and free online video services seem to favour paid services, and to reserve the portability feature to them.

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<sup>15</sup> The Portability Regulation includes specific provisions on the protection of personal data (Article 8). Data collected for the purpose of verifying the Member State of residence shall be used only for that purpose and not longer than necessary.



### **3.5. In a moving context, portability is not necessarily seen as a priority**

Online services are evolving fast, both in terms of technology and (as mentioned in the previous section) offers. In this context, the priority may be given to optimise the existing services, with a focus on the national markets, or restructure the offer in the view of the launch of new paid services. In particular, broadcasters may want to first increase the number of programmes which they are in a position to make available online on their national market (i.e. by obtaining the necessary online rights), before considering the implementation of portability.

### **3.6. The value given to portability depends on business models**

#### **3.6.1. The portability rules bring less tangible benefits for Broadcasters' own programmes**

Broadcasters' online TV services mainly consist of catch-up only (available for a limited period of time, generally 7 days). Broadcasters' programming made available on catch-up differs in terms of shares of own and acquired programmes.

Certain broadcasters of the sample mainly propose, for their online offer, own productions. They generally own the exploitation rights of these programmes for a distribution abroad and can therefore make them available online across borders. In this context, the benefits of the portability rules may be less tangible, since users can in many cases already access the programmes from other Member States. In certain cases however, the broadcasters would not have cleared all the underlying rights<sup>16</sup> for making the programmes available online in other Member States. The portability rules can here still be of added value in this situation.

#### **3.6.2. Access to catch-up and simulcast may be delivered by paid services already providing for portability**

15 services from the sample have a paid service in place (for catch-up or VOD) for which they are obliged to provide portability. These services also give access to catch-up

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<sup>16</sup> e.g. the rights of a book from which a programme has been adapted, or archive images included in the programme.



contents abroad. Some examples of these services include Prima Play in the Czech Republic, TV NOW in Germany, Atresplayer in Spain, MyTF1 in France, ITV Hub in the United Kingdom, RTE Player in Ireland, Mediaset Play in Italy or NPO Start in the Netherlands.

### 3.6.3. Some free online video services have already cleared rights for pan-European availability

Some services (very few) are not concerned by portability for a different reason: the “pan-European” services have by definition cleared the rights and offer their entire catalogue (or a large majority of it) for free already at European or global level. Examples include:

- Medici TV: an online service for musical contents (concerts). Its offer (free and paying options) is available worldwide.
- Cinepub in Romania is defined in its website as “a living archive of film”; it is a free distribution platform for Romanian archive works that have become part of the national heritage and the service makes films available for free at international level.
- Arte: a TV channel airing in French and German across Europe. Their digital offering (website, mobile application and smart TV application including third party platforms) aims to reach the same European coverage; and the “Arte Europe” project, supported by the EU, wants to reach European citizens even in languages other than French and German (sites in English, Spanish, Polish and Italian are already available).

Arte’s entire digital offering registered an average of 54 million monthly video views in 2018, 8.7 million of which were viewed outside of France and Germany. For its digital offering in French and German, which is free of charge for the users, 72,3 % of the contents were available 2018 in the 28 countries members of the European Union + the 4 EFTA countries. Worth noting is that 100 % of the digital offerings in English, Spanish, Polish and Italian (which is also free of charge for the users) were available 2018 in the 28 countries members of the European Union + the 4 EFTA countries, half of it being even available worldwide.

## 3.7. Costs and benefits of implementing portability

Beyond the discussion about the level of demand, several free online video services are in the process of assessing the costs and benefits of portability. They have provided the following arguments:



- Portability generates costs, including for instance upgrading the website and, probably more importantly, improving the technical quality and security of the streaming abroad<sup>17</sup>.
- To recoup these additional costs, in terms of revenues, implementing portability can, on the one hand, increase the audience of the service; but, on the other hand, introducing a mandatory login for residence verification purposes can weight (at least in the short term) on the domestic audience.
- Although portability is a very circumscribed issue, some services seem to be concerned about the indirect loss of revenues linked to the sale of their programmes abroad: they fear that the exposure of their programmes abroad, although strictly limited to their domestic users traveling abroad, may lower the commercial value of their programmes.
- The possible reaction of right holders to the implementation of portability was also mentioned by certain services as a factor of uncertainty when assessing the costs and benefits of portability. Even if, under the Portability Regulation, the implementation of portability should have no impact on the cost of acquiring programmes, certain services are concerned that the implementation of portability could make the acquisition of rights more complicated: right holders may consider that portability gives exposure to their programmes in a foreign country, with the risk of jeopardizing future sales; or they may wonder about the consequences of portability in terms of protection of their content and require the services to use specific technologies in this regard. Other services, which have already implemented portability, have not reported such problems.

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<sup>17</sup> The Portability Regulation does not include any obligation for the services in terms of quality of the online content service accessed from another Member State (Article 3(3) of Regulation (EU) 2017/1128)



## 4. Early positive feedback

The first feedbacks from the services which have implemented portability seem rather positive. All four services have indicators on how the service is accepted and some also on how it is used from abroad:

- RTBF was one of the first services to implement portability, in the summer of 2018. It is worth noting that their rush was related to their group holding the rights to broadcast the FIFA World Cup. After half a year of portability, 10% of their accounts had activated the portability. That means more than 200.000 people in Belgium.
- VRT has noted that an average of 15% of the consumption of video each day comes from abroad.
- TVP Poland has provided data on both domestic and abroad uses: 87,26% of users are from Poland, 3,35% from Germany and 2,89% from the United Kingdom.
- YLE Finland's Areena has implemented portability in December 2018, the press campaign taking place only in February 2019. So far, nearly 18 500 Yle ID users have verified their domicile for portability.

On a more qualitative note, the following comments were done in the survey:

- "Overall, feedback has been positive and this feature seems to add value to users. (...) Most movies and series were not accessible in the EU area previously so the change is rather major", YLE Areena.
- "[Consumers] were very enthusiastic", RTBF
- "The users are very satisfied. Finally they can watch their favourite shows when they are away", VRT NU

**Table 6. Changes in use implied by portability**

<b>Did portability imply a major change in how the service was accessible before?</b>	<b>In place</b>	<b>In preparation</b>	<b>Total</b>
Major change: most movies and series are now available	1		1
No longer the "Content not accessible" message from abroad	1		1
No main changes / most videos were accessible before	1		1
No main changes / login was already in place		1	1
Added control: login		1	1
Added cell phone check	1		1
<b>Total</b>	<b>4</b>	<b>2</b>	<b>6</b>



## 5. Informing users about portability

Feedback on communication tools to communicate on portability is limited since few services have launched portability.

Article 6(2) of the Regulation provides that free online video services opting in to benefit from the portability rules should inform their subscribers and the relevant right holders of decision "prior to providing that service" and "by means which are adequate and proportionate". Recital 20 adds that such information could be provided on the provider's website.

The four services which have implemented portability have used different media and tools, but only two have created specific press and media campaigns; one of them was the RTBF, motivated by the holding of the rights of the FIFA World Cup in the summer of 2018.

**Table 7. Communication on implementation of portability**

<b>How have you informed users/consumers that you are now offering portability?</b>	<b>In place</b>
FAQ section of website	2
Press release / Communication campaign	2
Banners on website	1
Social media	1
Via customer service	1
Attached to payment processes for the Licence fee	1
<b>Total</b>	<b>8</b>







## 6. Technical modalities should not be underestimated

### 6.1. Overview

The following table summarises the main technical hurdles mentioned by the respondents to the survey.

**Table 8. Obstacles to implement portability**

Did the implementation of portability raise any particular difficulty? Are you anticipating any potential hurdle?	In place	In pre-paration	Consi-dering	Total
Technical prerequisites (implementation of login / planning of User-Experience; implementation of DRM (Digital Rights Management); interconnection to a state digital register to check the user country of residence; technical work for video distribution system; needed recourse to external providers)	6	1	2	9
Legal checks; legal implementation of Article 6 <sup>18</sup> of the Regulation	1	1	1	3
Slow rate of adaptation by users to login requisite; loss of elderly users without the technological skills to consume e-services		2	1	3
No clear cost/benefit; not a strategic priority			3	3
<b>Total</b>	<b>7</b>	<b>4</b>	<b>7</b>	<b>18</b>

<sup>18</sup> Article 6 of the Regulation (EU) 2017/1128:

6.1. 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.

6.2. 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 key findings are summarised in the following sections.

## 6.2. A key issue: login and verification

The Portability Regulation (Article 6) foresees the condition for free online services providing portability to verify the Member State of residence of the user: “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.”

Some free online video services may have already implemented a mandatory login system: the user has to register with the service in order to access to the content. However, registering to an online service usually implies to provide only a very limited set of personal data, which are not necessarily sufficient to verify the Member State of residence. To do so, the online service must implement another layer of data gathering and checking, based on the selected verification means (see section 6.2.2 below).

### 6.2.1. Status-quo of login on the sample services

The analysis of the sample services shows that 28 services (out of 52) have a login system in place. They have therefore part of the technical solution to implement portability already in place, i.e. the registration of user<sup>19</sup>.

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<sup>19</sup> Registration can be made through social networks or providing just an email address. The service provider has in this case no guarantee that the information provided is accurate.

**Table 9. State of play of login**

Portability / Login in place	No	Yes	Total
In place		4	4
In preparation	1	1	2
Considering	4	3	7
Not considering	5	7	12
n/a	14	13	27
<b>Total</b>	<b>24</b>	<b>28</b>	<b>52</b>

**Table 10. State of play of mandatory login**

Portability/ Mandatory login in place	No	Yes	Total
In place	2	2	4
In preparation	1	1	2
Considering	5	2	6
Not considering	12		12
n/a	20	7	28
Grand Total	40	12	52

For only 12 of the services, the login is compulsory. However, as stated before, having implemented a login system, compulsory or not, does not imply that the data necessary for the verification of the Member State of residence is available to the service provider.

Furthermore, some reluctance to implement a mandatory login requirement is linked to the risk to discourage use, in particular for older viewers. Also mentioned is reluctance for giving away data and compliance with GDPR.

For ZDF “*there are a number of problems related to data protection. The use of data of license fee payers is strictly limited to the purposes of collecting the license fee. Data must be deleted immediately if they are no longer necessary for that purpose. Moreover, these data identify only one person per household, the “payer”. The data does not identify the other persons of the same household.*”

Ireland’s RTE has “*opted out [of Portability] due to our inability to verify addresses as users are not required to log-in on our free Player. GDPR is also an issue in this area.*”



The survey still indicates a general trend towards mandatory identification of the users. As having a mandatory identification in place can be regarded as a first step towards the implementation of a verification system, it will probably benefit portability in the long term. One could conclude that Portability is not enough alone to justify the implementation of mandatory login, but that login helps implementing portability as a by-product.

## 6.2.2. Several verification schemes have been put in place

The Portability Regulation (Article 5) mentions that “(...) 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”. It foresees a series of verification means. Some are specific to paid services; other may apply to free services:

- 1) 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, or any other valid identity document confirming the subscriber’s Member State of residence;
- 2) payment details such as the bank account or credit or debit card number of the subscriber;
- 3) the place of installation of a set top box, a decoder or a similar device used for supply of services to the subscriber;
- 4) the payment by the subscriber of a licence fee for other services provided in the Member State, such as public service broadcasting;
- 5) an internet or telephone service supply contract or any similar type of contract linking the subscriber to the Member State;
- 6) registration on local electoral rolls, if the information concerned is publicly available;
- 7) payment of local taxes, if the information concerned is publicly available;
- 8) a utility bill of the subscriber linking the subscriber to the Member State;
- 9) the billing address or the postal address of the subscriber;
- 10) a declaration by the subscriber confirming the subscriber’s address in the Member State;
- 11) an internet protocol (IP) address check, to identify the Member State where the subscriber accesses the online content service.

Several verification schemes have been put in place by the free online video services who have already implemented portability. Some of them help to overcome the previously mentioned hurdles because they are based on pre-existing secured verification methods (payment details, State digital registers, etc.):

**Table 11. Country of residence verification schemes**

What are the technical modalities to access portability in terms of verification of Member State of Residence?			
Country	Service	Service provider	Modalities
BE	rtbf.be	RTBF	Postal address and (mobile) phone from country of service
BE	VRT NU	VRT	(Mobile) phone from country of service
FI	Areena	YLE	Check with Population Register Centre's API the permanent domicile provided by user (through e-ID or e-bank credentials)
PL	TVP VOD	TVP	Licence fee information (postal address) or payment information (for Premium contents) through mobile phone or Bank/Credit card
EE	err.ee	ERR	User's residence checked through ID-card, Mobile-ID or Smart-ID functions (used in Estonia for a variety of e-services)
SI	RTVSLO	RTV	Licence fee bill requested (issued only to Slovenian residents)

### 6.3. Other technical aspects are important too

The implementation of portability has other implications, notably improving the quality of the streaming abroad, although this is not a legal requirement. Additional developments of the Digital Right Management (DRM) systems were also mentioned: DRM technologies are intended to control the use, modification, and distribution of copyrighted works. They include, for instance, conditional access systems, which limit the access to content to subscribers or identified users; geo-blocking, i.e. the limitation of access to users located in a certain geographical zone (usually based on the verification of the user's IP address<sup>20</sup>). Obviously, if the access to content in the domestic market is granted based on the IP address, i.e. on the fact that the user is physically based in the domestic market, such a system cannot apply to grant access abroad in a situation of portability. Another DRM system has hence to be implemented.

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<sup>20</sup> IP address: a unique string of numbers separated by full stops that identifies each computer using the Internet Protocol to communicate over a network.



## 6.4. Relationships with right holders

Despite the clear legal framework, some resources have to be dedicated to legal aspects. Some are mentioned in relation to:

- Explaining to right holders the implications of the implementation, a matter of communication.
- Limited interrogations on the impact of portability in the relationships with right holders.

The acceptance by right holders of implementation by free online video services does not seem to be a major hurdle to portability. For the three cases in which the services declare having received inquiries from right holders, it was mainly the concern on the securing of the distribution of those contents that was mentioned. The use of DRM (Digital Rights Management) for the trans-national distribution of videos was a request from right holders, and this has caused some extra technical difficulties, as seen above.



## 7. Conclusions

In a context of a fast evolving market, the implementation of portability by free online video services is still at an early stage and is led by public broadcasters: 13 European free online video services from the sample have implemented (4), are working on the implementation (2) or are considering (7) implementing the Portability Regulation. The first feedbacks from the services which have implemented portability seem rather positive, both in terms of use and relationship with right holders.

The main rationales for implementing portability are: the need to answer the demand from users; for public broadcasters to provide a better public service; to level the competition with pay services; and to encourage users to register. However, other services stress the potential impact of mandatory login on the use of their online services, the lack of clear benefits compared to the envisaged costs or the risk of a negative reaction of right holders.

The technical aspects linked to the implementation of the Portability Regulation (verification of the users' Member State of residence and security process required to check that only eligible users can access the service from abroad) are an important element in the decision of free online video services.

Finally, most free online video services have indicated that it is too early to identify needs for change in the Portability Regulation; a few of them stated that the identification and registration process should be simplified and that right holders should be better informed on the fact that the Regulation does not affect rights clearance or licensing fees.

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