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Cross-border portability of online content services in the internal market

Impact Assessment (SWD (2015) 270, SWD (2015) 271 (summary)) of a Commission 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 (COM (2015) 627)

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's Impact Assessment (IA) accompanying the above proposal, adopted on 9 December 2015.

This proposal is one of the first legislative initiatives proposed under the umbrella of the Digital Single Market (DSM) Strategy. The DSM Strategy is in itself one of the ten political priorities of the Juncker Commission. The portability proposal aims to contribute to the key objectives of the DSM allowing for better online access to digital goods and services across the EU Member States when travelling. Further legislative proposals in the field of copyright are expected in 2016. Thus, rather than proposing a comprehensive reform of copyright legislation, which has long been on its agenda, the Commission is pursuing a somewhat piecemeal approach to the exercise. The current EU copyright framework is highly fragmented with numerous directives dealing with specific subjects and a set of international treaties with which the EU legal framework has to comply.¹

The portability of online content services, which is, by its very nature, temporary, should be distinguished from so-called 'geo-blocking', which refers to limited or lack of consumer access in one Member State to online content services provided in another Member State. For the purposes of this IA, the Commission defines online content services as services giving access over the internet to copyright-protected content such as films, music, e-books or games and to radio or TV programmes (IA, p. 4).

Problem definition

The main problem identified by the IA is the limited cross-border portability of online content services. According to the IA, 'cross-border portability, or the absence of it, concerns online content services to which consumers have lawful access (whether in exchange for payment or free of charge), or content that they have purchased or rented online in their country of residence and to which they want to continue to have access when travelling in another Member State' (IA, p. 6). The IA repeatedly emphasises that the problem identified requires specific action and cannot be addressed by other measures within the DSM Strategy (IA, p. 6). It is furthermore emphasised that the growing use of connected mobile devices, such as tablets and smartphones, indicates consumers' interest in accessing content wherever and whenever they want (IA, p. 11). The IA explains that consumers purchase or rent content either on a one-off basis (transactional services, e.g. services provided

¹ See S. Reynolds, 'Review of the EU copyright framework', EPRS European Implementation Appraisal, October 2015 and T. Madiaga, 'EU copyright reform: Revisiting the principle of territoriality', EPRS Briefing, September 2015; for more details on the portability proposal, see T. Madiaga, 'Cross-border portability of online content services', EPRS Briefing (EU Legislation in Progress), February 2016.

by iTunes) or by entering into a longer-term contractual relationship (subscription services, e.g. services provided by Netflix). The IA highlights that there are significant discrepancies from one content industry sector to another, and acknowledges that, as a consequence, the presence and the scale of the problem varies depending on the sector (IA, pp. 8-11). While cross-border portability is particularly limited in the online audiovisual (AV) sector, as well as in premium sports content services, the problem seems almost non-existent for the music, e-books and video games sectors. The IA argues that the scale of the problem in the AV sector and in sports coverage is important and continues to grow, firstly, due to the increasing number of online subscription-based services and, secondly, owing to increasing consumer demand.²

The IA identifies 'different business practices in the different sectors' as problem drivers, in particular 'licensing practices of right holders and/or commercial practices of service providers' (IA, pp. 12-13). For instance, regarding the licensing practices of right holders, the IA makes the following observations: in the AV sector, where territorial licensing and exclusivity of premium content for a defined period is common, service providers willing to acquire a licence for another territory for portability purposes are prevented from doing so (because of the exclusive nature of exploitation rights). By contrast, in the music sector, the vast majority of music content is not licensed on an exclusive basis which allows as a result for the cross-border portability of services. The IA underlines that, in the short to medium term, only EU intervention can ensure that the conditions for consumers' access to online content services do not vary according to the Member State (MS) in which they are located at a given moment.

Objectives of the legislative proposal

The objective of the Commission proposal is to ensure cross-border portability of online content services in the EU. The IA specifies that to improve the functioning of the DSM, the *general* objectives aim at removing barriers that currently prevent consumers travelling in other EU Member States from using services, which they have subscribed to - or from accessing content that they have purchased or rented - in their Member State of residence. From the perspective of right holders and service providers, the objective is to better respond to the needs of consumers. The *specific* objective of the EU action is to ensure the cross-border portability of online content services as one of the measures necessary to complete the DSM according to the IA report (IA, p. 22). In the section on the Commission's preferred option, the following two operational objectives are identified: first, to increase the number of subscription-based and transaction-based online content services that are portable across borders and, second, to increase the number of consumers using this feature of the online content services (IA, p. 48).

Range of options considered

The IA considers three options in addition to the baseline, which implies no changes. Before discussing these options, the IA explains that the identified objectives could also be achieved 'by the introduction of the rule localising all copyright-relevant acts occurring online combined with a further harmonisation of copyright law or by a full harmonisation of EU copyright law and a single European copyright title' (IA, p. 23). The Commission discards these options as disproportionate in relation to the objective underlying this proposal, while not excluding them as longer term projects.

1. No changes, baseline

This option would consist in relying on market players to progressively offer portability of content services as well as on courts, and notably the CJEU, to clarify the application of EU law. The baseline scenario is further developed in the problem description (see IA, pp. 17-19), in which emphasis is placed on the expected growth in consumer demand for the cross-border portability of online content services as a result of the increased use of mobile devices. This would be the case in particular in the AV sector and for premium sports content.

2. Option 1: Guidance to stakeholders on the cross-border portability of online content services

This non-legislative option foresees Commission guidance to stakeholders in order to encourage online content service providers to allow for cross-border portability of their services across the EU. In this option, guidance would be extended to right holders, encouraging them, in turn, to grant licensing rights to service providers

² On the estimates of the increasing consumer demand, see section below on 'quality of data, research and analysis.'

allowing for portable uses (IA, p. 23). Finally, Member States would be invited to actively monitor market developments and the conditions under which portability of services is granted.

3. Option 2: Legal mechanism to facilitate the cross-border portability of online content services

The IA explains that this option would introduce 'a legal mechanism according to which the provision of the online content service to a consumer who has lawful access to an online content service in his MS of residence, and is temporarily present in a MS other than his MS of residence, would be deemed to occur in the MS of the consumer's residence (as opposed to in the MS of temporary stay of the consumer)' (IA, p. 24). This way, the service provider could provide cross-border portability of services across the EU without having to acquire rights for other EU MS - if not limited by contract. The IA makes clear that there would be no prohibition to limit or prevent the application of the legal mechanism by means of contractual clauses. The IA specifies some definitions for this option, such as 'MS of residence' and 'temporary presence'. For this option, the IA proposes the use of a Regulation as legal instrument because it would be directly applicable and ensure uniform application of the rules in the EU MS, while in addition guaranteeing legal certainty for all stakeholders.

4. Option 3: Intervention to ensure the cross-border portability of online content services in the EU

The IA explains that this option contains three elements. In addition to integrating the legal mechanism described in Option 2, Option 3 includes an obligation on service providers who lawfully provide online content services in a MS of the EU to ensure cross-border portability of services (thus offering, for example, the same content, the same range and number of devices and the same range of functionalities as those offered in the MS of residence). Providers would, however, not be obliged to provide the same quality of the delivery of an online content service in other EU MS as in the MS of residence of the customer. Next, this option provides for a prohibition of restrictions in contracts which would limit cross-border portability of online content services. The definitions would be the same as in Option 2. Again, for the same reasons as explained in Option 2, the Commission proposes a Regulation as legal instrument.

The IA thus presents a variety of options, including a non-regulatory one. It is nevertheless revealing that the preferred option (Option 3) is discussed in much more detail than Options 1 and 2. The limited scope of the initiative makes the decision to discard options relating to a further harmonisation of copyright law appear plausible. Moreover, it seems from this presentation of the options that the specific objective of the initiative can only conceivably be achieved by Option 3.

Scope of the Impact Assessment

In section 6 of the IA, all four options, including the baseline, are assessed successively against their (expected) effectiveness, efficiency and coherence with other EU policies (IA, pp. 26-48). This structure is rather unusual since the normal approach is typically to present the economic, social and environmental impacts for each option as required by the Better Regulation Guidelines, and then to compare them against the above criteria. In this IA, the economic and social impacts are not readily apparent for each option.

The IA neither contains the quantified costs for affected stakeholders nor the benefits of the intervention. The IA repeatedly points out that the different costs are difficult to estimate because they depend on a variety of factors, including current practices of service providers, and number and duration of relevant contracts (IA, pp. 31, 42, 43). The assessment throughout the IA is of a qualitative nature. To that effect, the IA specifies that the baseline option would not entail any compliance costs, while Options 1 and 2 could generate administrative and technical costs for all those right holders and service providers who decide to adapt their licensing practices and terms of use in order to allow for portability of content. This would particularly affect the AV and sports sectors. Option 3 could generate some technical costs for all those service providers who do not yet offer portability. This could imply investing in technical functionalities to verify the MS of residence and verify the temporary use of the service as well as costs which are not directly triggered by Option 3, such as short-term costs, in case the parties want to review the licensing agreements (IA, p. 47).

For all options, the IA points out that the impacts will vary depending on the sector and on different licensing practices. The most affected sectors, in terms of the way in which the content is licensed, would be the AV and sports sectors. Generally speaking, no significant impacts or changes are expected in the music, e-books and games sectors.

Regarding the *baseline*, the IA forecasts that the pressure exerted by consumers might progressively result in right holders and service providers finding solutions to allow cross-border portability of online AV content. This would, however, be likely to require long negotiations. As regards sports content, sports organisers may gradually offer cross-border portability when selling their broadcasting rights (IA, pp. 27-28). *Option 1 (Commission guidance)* would mainly address and invite right holders to review their licensing practices in the AV and sports sectors. However, it is considered unlikely that this would generate a consistent approach across sectors. Consumers would benefit from a higher number of portable online content services offering AV and premium sports content, but the process is likely to be slow and they might have to face higher prices (IA, pp. 29-30).

With regards to *Option 2 (legal mechanism)*, the IA highlights that 'the actual application of the legal mechanism would depend on the outcome of contractual negotiations between the parties as well as on the commercial decisions of the service providers' (IA, p. 31). The IA also states that the expected impact on the industry would be marginal. If service providers offered cross-border portability under this option, consumers would possibly benefit from a higher number of portable online content services offering AV and premium sports content but might have to pay higher prices. *Option 3 (intervention to ensure cross-border portability)* would entail a notable change. Service providers would be obliged to offer cross-border portability for paid services as well as for services free of charge, if the providers can verify the subscriber's MS of residence (IA, p. 37). The IA stresses that Option 3 would respond to the consumers' demand to have continued access to online content services while travelling in the EU. The IA describes the practical implications of the initiative for affected stakeholders in Annex 3 (but, noticeably, only for Option 3).

The Commission indicates that for all options there would be no, or very limited, impact on the production of culturally diverse content (IA, p. 47). Regarding fundamental rights, the IA points out that the baseline, Option 1 and Option 2 would not have any impacts. Option 3 would have a limited impact on copyright as a property right and on the freedom to conduct a business, as recognised in the European Charter of Fundamental Rights (Articles 16 and 17). However, the IA states that the measure would be justified in view of the Treaty's fundamental freedom to provide and receive services across borders, and data processing would have to comply with the provisions of the Data Protection Directive 95/46/EC³ in all cases (IA, pp. 47-48). The IA emphasises that none of the options would have impacts on third countries, trade, environment or the international obligations of the EU or the Member States (IA, pp. 29, 32, 37 and 45). Moreover, it appears that none of the options would have an impact on employment (although this is not explicitly specified for Option 2).

Given that the Commission proposes to base the cross-border portability of online content services in the EU on the principle of extending the contractual rights consumers enjoy in their MS of habitual *residency* to apply also in MS in which they travel, it would have been helpful if the IA had reviewed the impact of the various residency criteria which apply across the EU (in particular MS coordination of EU citizens' residency statuses, or lack thereof). Not only is there no harmonised EU definition of residency (and a wide body of ECJ case law as a result), but there are also variations from one MS to another in the precise rules for determining residency.

Subsidiarity / proportionality

The proposal is based on Article 114 TFEU, which confers competence on the EU to adopt measures that have as their object the establishment and functioning of the internal market. The IA explains that 'removing the existing barriers to the portability of online content services during temporary presence outside the home MS would, depending on the sector, be a first step to make possible or facilitate and encourage the free movement of those services in the internal market, and adapt the legal framework to the change in circumstances brought about by

³ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

the very rapid growth of the use of portable devices across borders' (IA, p. 19). It is further specified that online content services, which would be affected by EU action, predominantly rely on copyright-protected content.

The present initiative would concern the exercise of harmonised rights at EU level across borders. According to the Commission, without the adaptation of the way in which rights are exercised, it would be extremely difficult to respond to developments in technology and in the commercial practices of service providers that allow consumers to access their online content services on the go via portable devices.

The IA assesses subsidiarity by examining necessity and EU added value. Regarding necessity, the IA points out that the portability of online content services is by definition cross-border in nature. One of the main reasons for the limited portability in the AV and sports content sectors is 'the complex system of contracts between right holders and the distributors/service providers in the 28 MS which ensure territorial exclusivity.' The IA argues that in order to provide full legal certainty and for the initiative to be 'future-proof', it is indispensable to cover all sectors of the content industry in an equal manner (IA, p. 21). With regard to EU added value, the IA specifies that in the short to medium term, only EU intervention can ensure that the conditions for consumers' access to online content services do not vary according to the MS in which they are located at a specific moment (IA, p. 21). Finally, concerning proportionality, the IA states that none of the options go beyond what is necessary to solve the identified problems (IA, p. 48).

No reasoned opinions from national parliaments have been issued on the legislative proposal. The deadline for submission was 12 February 2016.

Budgetary or public finance implications

The explanatory memorandum to the legislative proposal states that the proposal has no impact on the EU budget (explanatory memorandum, p. 7). The IA does not quantify costs for Member States.

SME test / Competitiveness

In section 6, the IA assesses, for each option individually, possible impacts on competition/competitiveness in the internal market and on SMEs. Regarding competition, the IA states that Option 1 could entail an impact on the competition between online service providers in the AV sector and with pay-TV operators, with the first online services offering portability benefiting from a competitive advantage over other services. However, that would not affect competition between service providers in different MS, if portability is offered on the basis of a residence requirement. Also, for Option 2, the choice of service providers as to whether or not to offer portability could turn the portability function into a provider's competitive advantage. By contrast, Option 3 is unlikely to affect cross-border competition as the portability feature would not enable consumers to subscribe to an online service offered in another MS (IA, pp. 30, 34, 38).

In view of impacts on SMEs, the IA points out that in the baseline scenario service providers offering online AV services would be increasingly interested in providing portability. If rights holders are willing to review existing licensing arrangements in this regard, there is a possibility that SMEs would be in a more difficult position due to market power dynamics. Concerning Option 1, it is stressed that certain online AV service providers which are SMEs would have to deal with proportionally higher costs because of lower bargaining power. This could, in turn, lead to reduced competitiveness (IA, pp. 27, 30-32). The IA describes in a separate paragraph the forecasted impact of Option 3 on SMEs, including micro-enterprises. The Commission indicates that the costs linked to the intervention in Option 3 could proportionally put more burden on SMEs than on larger businesses but that the negative consequences of excluding SMEs or micro-enterprises are estimated to outweigh the savings in costs. The IA assesses that including SMEs and micro-enterprises in the scope of the exercise would 'probably be the only way to enable them to align their offers and provide portability to their customers [...], thus contributing to their competitiveness on the market. Moreover, exempting micro-enterprises from the scope of the rules is likely to undermine the efficiency of the measure, considering that many online content service providers are micro-enterprises' (IA, p. 43). The IA does not, however, include a cost-benefit analysis quantifying possible economic impacts (and thus no formal SME test), in particular covering the projected costs to industry of introducing verified access systems or authentication measures.

Simplification and other regulatory implications

The present proposal is one of the first initiatives of the DSM Strategy, addressing as it does one very specific aspect with a view to facilitating access to digital content for consumers when travelling to another MS. At this point it is difficult - if not impossible - to assess the coherence of this proposal with other relevant pieces of law under the DSM Strategy, since these have yet to be adopted. The IA points out, however, that 'cross-border portability and possible other initiatives under the DSM Strategy will eventually complement each other in removing barriers to the functioning of the DSM' (IA, p. 6).

Quality of data, research and analysis

The research behind the IA appears to be sound, wide-ranging and up to date. The Commission used a number of legal and economic external studies commissioned by DG MARKT and DG EAC, as well as studies prepared by the JRC under the Digital Economy Research Programme (for more details, see Annex 1 of the IA).

The scope of the IA is very narrow, the Commission deliberately choosing to concentrate on the aspect of portability and to address it with a single legislative instrument. While the work on the IA started in 2014 (IA, p. 50), it should be noted that the Commission also used some data and research in this IA that was originally prepared under the Barroso II Commission, which foresaw at the time an ambitious overhaul of the copyright rules. Since at least May 2011, a modernisation of the EU copyright framework has been on the Commission's agenda.⁴ In this context, a public consultation and the 'Licences for Europe' initiative⁵ were conducted (both used and referred to in the present IA - see under 'stakeholder consultation' below). In addition, in 2014, a draft impact assessment was leaked but never published, covering the modernisation of the entire EU copyright *acquis*, in which limited cross-border portability was identified as one of the issue that needed to be tackled.

The analysis and calculations that the IA presents on the current and future consumer demand for cross-border portability merit a closer look. Concerning the current consumer demand for portability, the IA claims that 'it is possible to estimate the percentage of European consumers *who would potentially use this feature*' [cross-border portability of paid subscription-based services] by combining data of two Eurobarometer surveys.⁵ 'They would represent over 29 million people at EU28 level, with significant differences by countries' (IA, pp. 11-12). The IA here quotes Eurobarometer 411 stating that '16 per cent of the respondents (representing 20 per cent of internet users) indicated they pay a subscription to access content online and 17 per cent of people have a subscription indicated they have already tried to use it abroad, while 21 per cent responded they would be interested to do so in the future' (IA, pp. 11-12). In other words, less than one fifth of the subscribers to online content services have actually tried to access the service abroad, and another fifth of subscribers would be interested in doing so. The IA further points out that '33 per cent of those who do not have a subscription consider cross-border portability as an important element if they were to take one' (IA, p. 12). The IA does not quote, however, the Eurobarometer regarding the share of people who say that if they took out such a subscription in the future, it would not be important for them to be able to access it in another Member State (which amounts to 52 per cent).⁶

Concerning the potential future consumer demand for portability, the IA reads, 'the percentage of European consumers at EU28 level *who would potentially use the cross-border portability feature of online subscription services* could reach 14 per cent by 2020. This would equal around 72 million people in Europe' (IA, p. 17). It is worth highlighting that this figure is based on three assumptions relating to, first, the forecast for the number of subscriptions for AV, assuming, however, that the trend would be the same across all media types; second, the forecast for the number of subscriptions for 14 MS assuming that it would be the same for EU28 and, third, projections of the growth in tourism for 2010-2020 and for subscriptions for 2014-2019.

The IA could perhaps have emphasised that limited portability mostly affects young people. The socio-economic analysis in Eurobarometer 411 reveals that the younger the respondent, the more likely they are to say that it

⁴ See S. Reynolds, 'Adapting the EU copyright rules to digital transformation', EPRS Briefing - Implementation Appraisal, July 2014.

⁵ Eurobarometer 411 on 'cross-border access to online content' and Eurobarometer 392 on 'preferences of Europeans towards tourism'.

⁶ See Eurobarometer 411 on 'cross-border access to online content', p. 90.

would be important to be able to use their service in another MS and the less likely they are to say they would never take out a subscription. Interestingly, the same holds true for people with a higher education level.⁷

Stakeholder consultation

The IA identifies the stakeholders affected by the problem to be addressed, and those affected by the proposed action. Generally speaking, the stakeholder consultation undertaken appears to be broad (see detailed presentation in Annex 2 of the IA, pp. 52-58). The Commission specifies that a series of consultations were conducted for this impact assessment, including the Green Papers on 'the online distribution of audiovisual works in the EU' and on 'preparing for a Fully Converged Audiovisual World: Growth, Creation and Value.'

The Commission also lists 'a wide-ranging public consultation on review of copyright rules' that was conducted from 5 December 2013 to 5 March 2014. The public consultation generated 9 500 replies and a total of more than 11 000 messages sent to the Commission's dedicated email address.⁸ The range of stakeholders consulted appears to be broad, covering the following categories: end users/consumers, authors/performers, institutional users, publishers/producers/broadcasters, service providers/intermediaries, collective management organisation, Member States, public authorities, and others. Upon closer examination, however, one may question how representative the figures are in the table on the self-declared category affiliation of the survey. For example, a total of 113 respondents classified themselves as 'service providers/intermediaries' amounting to just 1.2 per cent of all respondents, which seems surprisingly little.

Next to the 'Licences for Europe' initiative, a stakeholder dialogue conducted in 2013, in which representatives of the AV sector affirmed their commitment to enhance portability, three stakeholder meetings were organised in 2015. The outcomes of these three stakeholder meetings are described in rather general terms (IA, p. 54). The IA breaks down the support of stakeholders for each option. Option 1 does not have much support (either amongst consumers or right holders and service providers, who initially favoured Option 1 but subsequently preferred legislative intervention). The content industry favours Option 2 because it eliminates the licensing obstacle while leaving contractual freedom for the parties. Under Option 2, service providers are not obliged to provide the cross-border portability of their services and right holders could influence the conditions for portability. AV producers, for their part, would prefer to control the triggering of the legal mechanism, i.e. condition the application of this mechanism on the agreement between right holders and service providers. Option 3 is the consumer's preferred option as it makes portability mandatory (IA, pp. 23-26).

Monitoring and evaluation

The IA indicates that the process of monitoring impacts should consist of two phases: Phase 1 will focus on how the Regulation is put in place in the MS by market participants and Phase 2 will concentrate on the direct effects of the rules contained in the Regulation and monitor the amendment of the existing contractual arrangements. The IA identifies indicators to be used to monitor progress in each sector (AV, music, e-books, games, sport) every second year as well as the possible sources of information (IA, p. 49).

The main indicators are the following:

- increase in the number of subscription-based online services offering cross-border portability;
- increase in the number of transaction-based online services offering cross-border portability;
- increase in the number of customers using cross-border portability;
- average number of days of use outside the MS of residence;
- evolution of prices of subscription-based and transactional services offering cross-border portability.

A comprehensive evaluation is envisaged five years after the start of application of the rules. However, it should be noted that none of these monitoring requirements have been carried over into the legislative proposal.

Commission Regulatory Scrutiny Board (RSB)

⁷ See Eurobarometer 411 on 'cross-border access to online content', p. 92.

⁸ See European Commission (DG Internal Market and Services), Report on the responses to the Public Consultation on the Review of the EU Copyright Rules, July 2014, p. 3.

The RSB issued a positive opinion on a draft version of the IA of 5 October 2015.⁹ This positive opinion was given, however, on condition that certain elements of the draft report were improved. The RSB in particular asked that the report should, firstly, objectively present the evidence base underpinning real policy choices, rather than only offering justification for a preferred solution, as well as better explain the need to act. Secondly, the RSB demanded that the report should be more explicit on the range of options to solve the problem of cross-border portability of online content and possibly supplement it with real alternatives/sub-options; more justification was also required in relation to the discarded options. Thirdly, the RSB requested that the report should be more balanced in terms of presenting positive and negative aspects and provide more details on the effect of particular elements of the options discussed.

The final IA report lists the RSB's points in Annex 1 on Procedural Information. This is a new requirement under the Better Regulation Guidelines. It is helpful that the final IA report explains the changes undertaken in light of the RSB opinion in a table. While some of the RSB's criticisms have been addressed in the final IA report, others could have benefited from further attention, notably the direct and indirect impacts of the legal mechanism. For example, the financial impact on the contractual chains could have been further investigated for particular scenarios and a systematic legal assessment of introducing the legal mechanism into EU copyright law would have helped to assess how legal certainty is ensured.

Coherence between the Commission's legislative proposal and the IA

The legislative proposal appears to be in line with the preferred option identified in the IA. However, as previously indicated the proposal does not contain any provisions on the monitoring and evaluation of the application of the Regulation.

Conclusions

Overall, the impression is that this IA has made a reasonable attempt to analyse the current situation, substantiating the need for EU action to solve the issue. The IA draws upon a wide range of research from different sources and disciplines, both external and internal, and the stakeholder consultation appears to be broad. However, the objective of the present initiative (to ensure cross-border portability) is formulated in such a way that it can in fact only conceivably be achieved by a legislative solution that prescribes portability on a mandatory basis (meaning Option 3, which is the Commission's preferred option). This could cast some doubt as to whether the alternatives presented were really considered as viable options. Also, some of the assumptions upon which the IA is based might merit some further examination. For example, this might be the case concerning the current and potential future consumer demand for portability based on Eurobarometer data. Finally, the IA could perhaps have been clearer from the start that the real issue at hand concerns almost exclusively limited portability of online content services in the AV sector and sport premium content services, but that for reasons of legal certainty, all sectors are technically covered by the initiative (IA, p. 21).

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Legal Affairs (JURI), analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

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⁹ [RSB Opinion Ref. Ares\(2015\)4728340 - 30/10/2015](#).