

A hot air balloon with a colorful, multi-colored pattern (yellow, green, blue, purple) is shown in the upper right corner, partially cut off by the edge of the page. The balloon is inflated and appears to be floating.

Portability Regulation: Important deadline of 2 June 2018

10 May 2018

The Portability Regulation (the Regulation) ([EU 2017/1128](#)) came into force on 1 April 2018. Part of the EU Commission's aim to establish a [Digital Single Market](#), the Regulation facilitates cross-border portability of online content. It allows for subscribed content services to “travel” with the subscriber throughout the entire European Union. Be it movies, sport events, music, e-books, online games, they all need to remain accessible when temporarily abroad in another Member State. Service providers need to make sure this travel option is provided to their customers. Providers of free-of-charge online content services may opt-in but if they do the Regulation applies to the full extent. Importantly, the Regulation applies to both new and existing subscriber contracts.

By 2 June 2018, providers of paid-for services must verify the Member State of Residence of each of their existing customers. To this end, the Regulation contains a total of 11 test criteria, out of which the provider can select and use up to two in order to verify. This includes payment information, for instance. Providers who make content available for free must review existing contracts within the first two months in which they enable cross-border portability. We recommend that service providers affected by the Regulation use the remaining time until 2 June to make sure that verification has been carried out properly and in time. In doing so, service providers should note that applicable privacy laws, including the [GDPR 2016/679](#), must also be adhered to.

In most Member States, including the UK, France, and Germany, subscribers are given a cause of action for breach of duty where a breach of the relevant Regulation provision, by the provider, causes damage to the subscriber. This applies to the obligation to verify the subscriber's Member State of residence.

More information about the new Portability Regulation and its practical impact on the digital economy can be found in our latest [blog post](#) on this topic.

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