



Zadeva: 007-38/2016/5

Datum: 16. 5. 2016

**Direktorat za notranji trg
Ministrstvo za gospodarski razvoj in tehnologijo**

Zadeva: Mnenje glede Predloga uredbe Evropskega parlamenta in sveta o zagotavljanju čezmejne prenosljivosti storitev spletnih vsebin na notranjem trgu (verzija z dne 10. 5. 2016)

Spoštovani,

Informacijski pooblaščenec (v nadaljevanju IP) je prejel vaše sporočilo, v katerem nas prosite za mnenje glede uredbe o čezmejni prenosljivosti medmrežnih vsebin - v njem je tudi člen, ki se nanaša na kriterije oziroma možnosti, ki jih ima predvidoma na voljo ponudnik prenosljivih storitev (tu gre npr. za video na zahtevo, ki bi ga po novi ureditvi naročniki lahko spremljali, kjerkoli na ozemlju EU brez omejitev oz. t.i. "geo-blocking") za preverjanje prebivališča in s tem omogočanje prenosljivosti. Kot ste pojasnili, bo pri nas to glede na do sedaj zbrane informacije že sama pogodba z naročnikom, kjer so zabeleženi nekateri ključni podatki. V uredbi je posebej opredeljen tudi člen, ki vsebuje določbo o varstvu osebnih podatkov, kljub vsemu pa bi želeli pridobiti tudi vaše mnenje o uredbi in predvsem o teh kriterijih (3B člen).

Avtentično razlago posameznih določb zakona daje le Državni zbor, neobvezno pa predlagatelj zakona, zato vam na podlagi informacij, ki ste nam jih posredovali, v nadaljevanju na podlagi 7. točke 1. odstavka 49. člena Zakona o varstvu osebnih podatkov (Uradni list RS, št. 94/07, uradno prečiščeno besedilo, v nadaljevanju ZVOP-1) ter 2. člena Zakona o informacijskem pooblaščenecu (Uradni list RS, št. 113/05 in 51/07 – ZUstS-A, v nadaljevanju ZInfP), posredujemo naše neobvezno mnenje v zvezi z vašim vprašanjem.

3B člen Predloga uredbe Evropskega parlamenta in sveta o zagotavljanju čezmejne prenosljivosti storitev spletnih vsebin na notranjem trgu (v nadaljevanju: predlog) določa naslednje:

Article 3B

Verification of the Member State of residence

- (1) *The provider of an online content service provided against payment of money shall make use of effective means in order to verify the Member State of residence of its subscribers. These means shall be reasonable and shall not go beyond what is necessary in order to achieve their purpose.*
- (2) *In order to comply with the obligation set out in paragraph 1, the provider shall rely on the following verification means:*
 - (a) *a declaration by the subscriber on their Member State of residence;*
 - (b) *an identity card or any other valid document confirming subscriber's Member State of residence;*
 - (c) *the billing address or the postal address of the subscriber;*
 - (d) *bank details such as bank account, local credit or debit card of the subscriber;*
 - (e) *the place of installation of a set top box or a similar device used for supply of services to the subscriber;*
 - (f) *the subscriber being a party to a contract for internet or telephone connection in the Member State;*
 - (g) *the subscriber paying a licence fee for other services provided in the Member State, such as public service broadcasting;*
 - (h) *sampling or periodic checking of Internet Protocol (IP) address to identify the Member State where the subscriber accesses and uses the online content service or identifying that Member State by other means of geolocation;*
 - (i) *registration on local electoral rolls, if publicly available; or*



(j) *the payment of local/poll taxes, if publicly available.*

Unless the Member State of residence can be sufficiently established on the basis of a single verification means, the provider shall rely on a combination of such means.

The declaration of a subscriber on their Member State of residence shall only be used in combination with one or more other verification means.

(3) *The provider and the holders of copyright and related rights or those holding any other rights in the content of an online content service may agree on the use of particular means referred to in paragraph 2 or any other means in accordance with paragraph 1 to verify the Member State of residence.*

[...]

(4) *The provider shall be entitled to request the subscriber to provide the information necessary for the verification of the Member State of residence. If the subscriber fails to provide that information and in consequence the provider is unable to verify the Member State of residence as required by this Regulation, the provider shall not, on the basis of this Regulation, enable this subscriber to access or use the online content service when he or she is temporarily present in a Member State.*

(5) *The holders of copyright and related rights or those holding any other rights in the content of an online content service may authorise the access to and use of their content under this Regulation without the verification of the Member State of residence, but otherwise in accordance with this Regulation.*

(6) *The agreement between the provider and the holders of copyright and related rights or those holding any other rights in the content of an online content service shall not restrict the possibility for the rights holder to withdraw the authorisation referred to in paragraph 5 on provision of reasonable notice to the provider.*

Po mnenju Informacijskega pooblaščenca 1. odstavek člena 3B predloga določa pomembno omejitev v smislu nujnosti obdelave osebnih podatkov – obdelajo se lahko samo tisti osebni podatki, ki so nujni za dosego namena, to je preverba prebivališča naročnika v državi članici. Opozoriti želimo, da namen podatkov določa omenjeni 1. odstavek 3B člena in da bi bila obdelava osebnih podatkov v nasprotju s tem namenom oziroma za druge namene v neskladju z načelom namenskosti, kot ga določa obstoječa Direktiva o varstvu osebnih podatkov 95/46 oziroma njene implementacije v nacionalni zakonodaji v državah članicah (na katere splošno napotujejo tudi uvodne določbe in predlagani člen 6). Če obstaja verjetnost, da bi bili podatki lahko uporabljeni (tudi) za druge namene, potem bi veljalo razmisliti o dodatni varovalki, ki bi bolj izrecno prepovedovala uporabo teh podatkov za druge namene (npr. pregon kršiteljev avtorskih pravic, izvajanje neposrednega trženja itd.). Žal nimamo dovolj informacij, da bi lahko ocenili, kakšna je ta verjetnost, zato to oceno prepuščamo vam.

S prijaznimi pozdravi,

Informacijski pooblaščenec:
Mojca Prelesnik, univ.dipl.prav.,
pooblaščenka

Priloge:

- mag. Andrej Tomšič, namestnik informacijske pooblaščenke