

Note for the OTA: Switching and porting requirements of the European Electronic Communications Code

Background

The European Electronic Communications Code (EECC) will update and replace the existing EU regulatory framework for electronic communications.

The EECC restates and reinforces end-user protections that are already in place while introducing additional end user rights. The end user protections are subject to full harmonisation. This means that, in the areas those protections cover, Member States may not maintain or introduce end-user protections in national law that diverge from those provisions of the EECC. This would include any provisions which are more or less stringent and would provide a different level of protection for end-users unless discretion for these provisions is expressly provided for in the EECC.

Member States have until 21 December 2020 to transpose the EECC into national law, at which point the obligations of the EECC come into effect. DCMS is considering the legislative changes required, with a view to consulting later this year. Ofcom is considering what changes are needed to the General Conditions, with a consultation planned for Q3.

EECC switching and porting requirements

Article 106 of the EECC addresses switching and porting. It includes requirements that the switching and porting processes should be: gaining provider led; efficient and simple for end-user; carried out in the shortest possible time on a date agreed with the end-user; ensure loss of service no greater than one working day; and, be carried out only with explicit consent. It also requires end-users to be informed before and throughout the process and for Member States to set rules regarding compensation.

A more detailed summary of the provisions of Article 106 is included below. In addition, Article 107 applies some of the provisions of Article 106 to all services included in a bundle that include internet access and voice services.

Industry working group on switching

Ofcom's initial analysis of the requirements of the EECC and the current General Conditions indicates that there will need to be new requirements. These requirements will need to be supported by new or amended industry processes. This is particularly the case for fixed services where we consider the majority of changes will need to be made. Given recent changes in mobile switching and porting, our initial analysis suggests there may not be a need for significant changes to requirements in relation to mobile services.

We would like the industry working group convened by the OTA to develop the processes in relation to fixed services. Below we have set out the key areas for focus based on our initial analysis and we have also provided a breakdown of the EECC provisions. We can provide further information on the scope and interpretation of different provisions to assist the OTA/working group in drawing up a process specification when needed.

New switching processes

Ofcom's initial analysis of the switching provisions indicates that there will need to be new requirements, and industry processes, for fixed services in relation to:

1. **'off-network' switching** – i.e. switches between service providers on different networks (irrespective of network technologies/infrastructure);
2. **'on-network' switching in the Openreach/KCOM networks** not already covered by General Condition C7 – specifically switches between service providers using network technologies/infrastructure other than copper/FTTC based voice and broadband services; and,
3. **'on-network' switching in other networks** – i.e. switches between service providers on the same wholesale network other than the Openreach and KCOM networks (irrespective of network technologies/infrastructure).

In addition, there will need to be new requirements in relation to large businesses for all types of switches and bundles of services that include internet access and voice services. We are still considering our overall approach for large businesses and bundles and so, at this stage, ask the OTA to focus on domestic consumers and small businesses and switching of voice and broadband services.

Amendments to porting processes

In addition to new switching processes, our analysis indicates that there will need to be some amendments to the porting processes. We are aware that the OTA are already working with industry to improve fixed porting and think it would be useful to consider these changes alongside the switching processes. A key area we think will need considering is the requirement for end-users to be able to retain the right to port their number for at least a month after the date of termination.

EECC Article 106 switching and porting requirements

The table below includes relevant requirements of Article 106 arranged by topic for ease of reading. Provisions refer to either switching, porting or both and apply to the following types of services:

- Internet Access Services (IASs)
- Bundles of services comprising at least an internet access service or publicly available number-based interpersonal communications service (e.g. a voice service)
- Numbers from the national numbering plan

Topic	Article	Article extract/Recitals	Scope			
			Switching / porting	IASs	Bundles	Numbers
General obligations						
Overall switching/ porting process	106 (6)	<p><i>National regulatory authorities may establish the details of the switching and porting processes, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the end-users</i></p> <p><u>Recital 281</u>: National regulatory or, where relevant, other competent authorities should be able to prescribe the global process of the switching and of the porting of numbers, taking into account national provisions on contracts and technological developments</p> <p><u>Recital 277</u>: ‘providers should ensure continuity of service so that end-users are able to switch providers without being hindered by the risk of a loss of service’</p>	S/P	✓	✗	✓

Topic	Article	Article extract/Recitals	Scope			
			Switching / porting	IASs	Bundles	Numbers
Right to port	106 (2)	<p>106 (2): <i>Member States shall ensure that all end-users with numbers from the national numbering plan have the right to retain their numbers, upon request independently of the undertaking providing the service in accordance with Part C of Annex VI.</i></p> <p>Annex VI, Part C: <i>The requirement that all end-users with numbers from the national numbering plan, who so request can retain their numbers independently of the undertaking providing the service shall apply:</i></p> <p><i>(a) in the case of geographic numbers, at a specific location; and</i></p> <p><i>(b) in the case of non-geographic numbers, at any location.</i></p> <p><i>This Part does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.</i></p> <p><u>Recital 281</u>: The right to port the number should be attributed to the end-user who has the relevant (pre- or post-paid) contract with the provider... The right to port numbers should not be restricted by contractual conditions.</p> <p><u>Recital 278</u>: End-users who so request should be able to retain their numbers independently of the provider of service and for a limited time between the switching of providers of service. The provision of this facility between connections to the public telephone network at fixed and non-fixed locations is not covered by this Directive. However, Member States should be able to apply provisions for porting numbers between networks providing services at a fixed location and mobile networks.</p>	P	×	×	✓
Efficiency and simplicity	106 (1)	<p><i>National regulatory authorities shall ensure the efficiency and simplicity of the switching process for the end-user</i></p>	S	✓	✓	✓

Topic	Article	Article extract/Recitals	Scope			
			Switching / porting	IASs	Bundles	Numbers
Switching and porting process						
Gaining-provider led	106 (6)	<p><i>The receiving provider shall lead the switching and porting processes set out in paragraphs 1 and 5</i></p> <p><u>Recital 281</u>: In order to facilitate a one-stop-shop enabling a seamless switching experience for end- users, the switching process should be led by the receiving provider of electronic communications to the public</p>	S/P	✓	✗	✓
Right to keep number after termination	106 (3)	<p><i>Where an end-user terminates a contract, Member States shall ensure that the end-user can retain the right to port a number from the national numbering plan to another provider for a minimum of one month after the date of termination, unless that right is renounced by the end-user</i></p> <p><u>Recital 278</u>: End-users who so request should be able to retain their numbers independently of the provider of service and for a limited time between the switching of providers of service</p>	P	✗	✗	✓
Timing	106 (1)	<p><i>The receiving provider shall ensure that the activation of the internet access service occurs within the shortest possible time on the date and within the timeframe expressly agreed with the end-user</i></p> <p><u>Recital 277</u>: providers should ‘where technically possible, allow for switching on the date requested by end-users’</p>	S	✓	✓	✗
	106 (5)	<p><i>The porting of numbers and their subsequent activation shall be carried out within the shortest possible time on the date explicitly agreed with the end-user. In any case, end-users who have concluded an agreement to port a number to a new provider shall have that number activated within one working day from the date agreed with the end-user</i></p> <p><u>Recital 281</u>: Number portability...should be implemented with the minimum delay, so that the number is functionally activated within one working day and the end-user does not experience a loss of service lasting longer than one working day from the agreed date</p>	P	✗	✗	✓
	106 (1)	[the providers concerned shall] <i>ensure continuity of the internet access service, unless technically not feasible</i>	S	✓	✓	✗

Topic	Article	Article extract/Recitals	Scope			
			Switching / porting	IASs	Bundles	Numbers
Continuity of service	106 (1)	<i>The transferring provider shall continue to provide its internet access service on the same terms until the receiving provider activates its internet access service.</i>	S	✓	✓	✗
	106 (1)	<i>Loss of service during the switching process shall not exceed one working day</i> <u>Recital 277</u> : ‘providers should ensure continuity of service so that end-users are able to switch providers without being hindered by the risk of a loss of service’	S	✓	✓	✗
	106 (5)	<i>In the case of failure of the porting process, the transferring provider shall reactivate the number and related services of the end-user until the porting is successful.</i>	P	✗	✗	✓
	106 (5)	<i>[In the case of failure of the porting process] The transferring provider shall continue to provide its services on the same terms and conditions until the services of the receiving provider are activated</i>	P	✗	✗	✓
	106 (5)	<i>loss of service during the process of provider switching and the porting of numbers shall not exceed one working day</i>	S/P	✗	✗	✓
Contract termination	106 (6)	<i>The end-users’ contracts with the transferring provider shall be terminated automatically upon conclusion of the switching process</i>	S	✓	✗	✓
Over the air provisioning	106 (6)	<i>[NRA may establish details...] This shall include, where technically feasible, a requirement for the porting to be completed through over-the-air provisioning, unless an end-user requests otherwise</i>				
		Also Art.93(6): Without prejudice to Article 106, Member States shall promote over-the-air provisioning, where technically feasible, to facilitate switching of providers of electronic communications networks or services by end-users, in particular providers and end-users of machine-to-machine services <u>Recital 249</u> : Member States should promote over-the-air provisioning of numbering resources to facilitate switching of electronic communications providers. Over-the-air provisioning of numbering resources enables the reprogramming of communications equipment identifiers without physical access to the devices concerned. This feature is particularly relevant	P	✗	✗	✓

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		for machine-to-machine services, that is to say services involving an automated transfer of data and information between devices or software-based applications with limited or no human interaction. Providers of such machine-to-machine services might not have recourse to physical access to their devices due to their use in remote conditions, or to the large number of devices deployed or to their usage patterns. In light of the merging machine to-machine market and new technologies, Member States should strive to ensure technology neutrality in promoting over-the-air provisioning				
Refunds	106 (6)	<i>Transferring providers shall refund, upon request, any remaining credit to the consumers using pre-paid services. Refund may be subject to a fee only if provided for in the contract. Any such fee shall be proportionate and commensurate with the actual costs incurred by the transferring provider in offering the refund.</i>	S	✓	✗	✓
Consumer Protection Measures						
Adequate Protection	106 (6)	<i>National regulatory authorities shall also take appropriate measures ensuring that end-users are adequately protected throughout the switching and porting processes</i>	S/P	✓	✗	✓
Consent	106 (6)	<i>nor shall they [both the receiving and transferring providers] port numbers or switch end-users without the end-users' explicit consent</i> AND <i>National regulatory authorities shall also take appropriate measures ensuring that end-users are not switched to another provider without their consent.</i>	S/P	✓	✗	✓
Info provision	106 (1)	<i>the providers concerned shall provide the end-user with adequate information before and during the switching process</i>	S	✓	✓	✗
	106 (6)	<i>National regulatory authorities shall also take appropriate measures ensuring that end-users are adequately informed ... throughout the switching and porting processes</i> <u>Note recital 279</u> : The impact of number portability is considerably strengthened when there is transparent tariff information, both for end-users who port their numbers and for	S/P	✓	✗	✓

Topic	Article	Article extract/Recitals	Scope			
			Switching / porting	IASs	Bundles	Numbers
		end-users who call those who have ported their numbers. National regulatory authorities should, where feasible, facilitate appropriate tariff transparency as part of the implementation of number portability				
Compensation	106 (8)	<p><i>Member States shall lay down rules on the compensation of end-users by their providers in an easy and timely manner in the case of the failure of a provider to comply with the obligations laid down in this Article, as well as in the case of delays in, or abuses of, porting and switching processes, and missed service and installation appointments.</i></p> <p><u>Recital 282</u>: Such measures should be proportionate to the length of the delay in complying with the agreement. End-users should at least be compensated for delays exceeding one working day in activation of service, porting of a number, or loss of service, and where providers miss agreed service or installation appointments. Additional compensation could also be in the form of an automatic reduction of the remuneration where the transferring provider is to continue providing its services until the services of the receiving provider are activated.</p>	S/P	✓	✗	✓
	106 (9)	<i>In addition to the information required under Annex VIII, Member States shall ensure that end-users are adequately informed about the existence of the rights to compensation referred to in paragraphs 7 and 8.</i>	S/P	✓	✗	✓
Provider Cooperation						
Good faith cooperation	106 (6)	<p><i>both the receiving and transferring providers shall cooperate in good faith. They shall not delay or abuse the switching and porting processes</i></p> <p><u>Note Recital 277</u>: ‘Service providers should...where technically possible, allow for switching on the date requested by end-users.’ This refers to all services even though the 106(1) requirement on timing only applies to IASs.</p>	S/P	✓	✗	✓

Topic	Article	Article extract/Recitals	Scope			
			Switching / porting	IASs	Bundles	Numbers
Porting Charges	106 (4)	<p><i>National regulatory authorities shall ensure that pricing among providers related to the provision of number portability is cost-oriented, and that no direct charges are applied to end-users.</i></p> <p><u>Recital 279</u>: The impact of number portability is considerably strengthened when there is transparent tariff information, both for end-users who port their numbers and for end-users who call those who have ported their numbers. National regulatory authorities should, where feasible, facilitate appropriate tariff transparency as part of the implementation of number portability</p> <p><u>Recital 280</u>: When ensuring that pricing for interconnection related to the provision of number portability is cost-oriented, national regulatory authorities should also be able to take account of prices available in comparable markets.</p>	P	×	×	✓
Responsibilities of third party networks	106 (5)	<p><i>Operators whose access networks or facilities are used by either the transferring or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process.</i></p>	S/P	×	×	✓