



ECC Report 196

Abuse, Delay and Compensation Mechanisms
in Number Portability

approved 17 April 2013

0 EXECUTIVE SUMMARY

This ECC report studies abuse and delay in number portability and discusses different approaches to national regulations on the subject. Furthermore, the report gives guidance on how to prevent abuse and delay. It also elaborates on compensation sanctions for non-compliance with number portability procedures. The report concludes that the NRA should monitor abuses and delays in porting processes and that the CRDB should assist in this by providing the NRA with relevant statistics. The NRA or other relevant national authority should encourage the use of good and well documented validation procedures based on stable parameters and automated processes.

The report concludes that the NRA or other relevant national authorities could together with market players create a policy for compensation mechanisms within number portability. The report concludes on some basic elements of such a scheme.

Views, interpretations or suggestions etc. which are made in the report are not in any way binding or representative for the opinion of single or multiple CEPT countries.

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LIST OF ABBREVIATIONS

Abbreviation	Explanation
ARPU	Average Revenue Per User
BEREC	Body of European Regulators for Electronic Communications
CEPT	European Conference of Postal and Telecommunications Administrations
CRDB	Centralised Reference Data Base
DDI	Direct Dial-In
EC	European Communities
ECC	Electronic Communications Committee (within the CEPT)
LoA	Letter of Authorisation
LLU	Local Loop Unbundling
MSN	Multiple Subscriber Numbers
NP	Number Portability
NRA	National Regulatory Authority
PAC-code	Porting Authorisation Code (UK)
PIN	Personal Identification Number
PT NP	Project Team Number Portability (within WG NaN)
PUK	PIN Unlock Key
RIO-code	Relevé d'Identité Opérateur (France)
SIM	Subscriber Identification Module
SLA	Service Level Agreement
SMS	Short Message Service
USD	Universal Service Directive
WG NaN	Working Group Numbering and Networks (within the ECC)

1 INTRODUCTION

Number portability (NP) plays an important role in a competitive market. The opportunity for a customer to keep the number when changing operators is a key facilitator of subscriber choice and effective competition. It lowers switching barriers and makes it easier for new entrants to challenge existing market positions.

The Universal Service Directive (USD) [1] article 30 clause 4.3 stipulates that:

“Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf.”

This is a new element in the European telecommunication regulatory framework. The aim of this document is to promote discussion, outline some regulatory approaches, give examples on different abuses and delays, address ways to prevent abuse and delay and investigate how to compensate the subscriber.

ECC Report 155 [2] discusses mainly the impacts of the USD article 30 clause 4.2 (the “one day” implementation) to the number portability procedures. This report may be considered as a follow up to ECC Report 155 as a delay in the one-day rule, considering national implementations, may give grounds for compensation.

In this Report the general term “operator” is used to generally to cover terms such as “service provider” and “provider”. The term “subscriber” is used to generally to cover terms such as “user”, “end-user”, “consumer”, “business customer”, “residential customer” and “customer”.

2 DEFINITIONS

Term	Definition
Abuse	Abuse, in the context of number portability, implies the fact that the rules or procedures that facilitate the porting of numbers between operators are purposely misused or not applied, and as a result an operator, a subscriber or a third party obtains an undue/unfair advantage or suffers a loss.
Activation	Activation of NP is considered when a service, using a ported number, is implemented in the recipient network, is deactivated in the donor network and the routing in the other networks is prepared. After activation the user is able to make and receive communications using the recipient network.
Chinese Walls	Policies and procedures to ensure that information does not flow within one company in a way that this would cause a conflict of interest, e.g. when the wholesale department receives information to port the number, they are not allowed to forward that information to the retail (sales) department.

3 DIFFERENT APPROACHES TO NATIONAL REGULATIONS

3.1 LEVELS OF REGULATIONS

The Universal Service Directive (USD) [1] article 30 clause 4.3 stipulates that:

“Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf.”

The provision does not mandate how Member States shall ensure that appropriate sanctions are provided for. It could be envisaged that the NP compensation rule could be implemented either by law, secondary legislation and regulations, decrees or industry standards/soft law, etc. If the operators themselves operate an industry-scheme of compensations without any, or limited mandatory framework of provisions, the member states may argue that, in this case, compensation sanctions are ensured. However, NP compensation rules involve providing for opportunities to impose a relatively strong burden on private parties. This requires a more formal legal basis in many countries.

The benefit of industry standards is that they can be flexible and efficient to implement and change. However, it often requires that market players are motivated and cooperative to create such standards. Traditional legal instruments have the benefit of authority, regulatory control and accountability.

Combinations of the approaches above can be envisaged for example starting with industry standards and introducing more formal regulations at a later stage. However, the industry standards need to be supervised by the national regulatory authority (NRA), and if they are not sufficient or not in line with the objectives of the regulations the NRA needs to intervene.

It is important that both the donor operator and the recipient operator, in the case that the latter accepts a new customer, cooperate in the portability process.

The compensation mechanisms may be regulated in detail or in more general terms.

The compensation rules may be formulated in general or more specific/detailed terms. A detailed compensation regulation may give the subscriber a right to compensation if specific conditions are fulfilled. The criteria for abuse and delay may be specified in great detail. Providers of electronic communications networks or services may, as an obligation, offer subscribers compensation in case of delay of porting or in case of abuse of porting made by, or on behalf of, the provider. This could imply that the providers shall operate a scheme which compensates subscribers in the event of a delay or abuse of a port request. The compensation could be automatic or be based on a subscriber request.

Such a detailed approach may include industry standards, decrees, laws and other kind of regulations or combinations

A more general approach may imply giving the NRA or other authorities an opportunity to require undertakings to compensate subscribers in cases of delayed porting or abuse. This could be on a case-by-case basis based on customer complaints or as a compensation obligation prescribed as one of many options from the regulatory toolbox of sanctions. These choices of general regulations might only be practical when the volume of complaints is low. There are different national entities dealing with complaints, such as dispute resolution boards, complaints board, consumer protection agencies, courts etc. Some countries have a separate complaints board only for complaints concerning electronic communications services.

The above mentioned approaches can again be combined and variations exist.

3.2 COMPENSATION PRACTICES

Today, it is exceptional if an NRA has a specific subscriber compensation regulation for NP delay or abuse. Therefore there is little data on the subject. In general there are few complaints regarding NP compared to the amount of numbers being ported every year. ANNEX 2: lists some available national compensation practices.

4 ABUSE AND DELAY OF PORTING

4.1 ABUSE WITHIN THE PORTING PROCESS

Abuse is a broad term, where both donor operator and recipient operator may be involved. It implies the fact that the rules or procedures that facilitate the porting of numbers between operators are purposely misused or not applied, and as a result an operator, a subscriber or a third party obtains an undue/unfair advantage or suffers a loss.

Typical cases of abuse within NP include:

- a) a porting process carried out, against the will of the subscriber, or
- b) a porting process not carried out, against the will of the subscriber, or
- c) a deliberate delay in porting.

There may be circumstances influencing the porting process leading to unwanted (non-)porting or delayed porting without abuse. Examples of this include technical factors leading to unforeseen complications in the porting process. Furthermore, some circumstances have been identified which may constitute unwanted (non-)porting or delayed porting. The examples below may constitute abuse in some countries, but in other countries the national regulations may allow one or more of the examples mentioned.

4.1.1 Abuse on the Donor Side

Abuse on the donor side may include situations where:

- The donor refuses to rightfully port a number. The porting request must be correct and the customer retention must be regarded as a breach of NP rules.
- The customer has difficulties in meeting the donor's unnecessary information requests, for example by demanding the PUK code.
- The donor does not respond to correct request at all or does it with a significant delay, and therefore in many implementations the porting is obstructed or delayed.
- Contractual clauses seeking to obstruct a porting request.
- An intentional delay may constitute an abuse.
- The donor neglects the agreed timeframes in porting execution messages and handles the porting prior to the scheduled time.
- Attempts to frustrate the switching process
 - Win-back during the porting process can be considered as abuse. In some countries win-back is not prohibited (Norway, Finland, Greece, Latvia, Lithuania, Czech Republic, Portugal and Spain) during the porting process. This practice is prohibited in other countries (Belgium, Croatia, Cyprus, Denmark, France, Italy, Malta, Montenegro, Ireland, Slovenia, Sweden and for geographic numbers the UK). In some countries win-back is allowed only during certain stages of the porting process.
 - An abuse can occur in cases where porting is dependent on information from the donor's side, such as porting codes or access configuration (e.g. correct DDI, MSN, ISDN, PAC-code [UK] or RIO-code [France]) and this information is not provided properly by the donor according to the NP rules.
 - The donor claims a fee from the subscriber for porting and/or to settle unpaid bills. This is forbidden in many countries.

4.1.2 Abuse on the Recipient Side

Abuse on the recipient side may include situations where:

- Portability request made by the recipient on behalf of the subscriber turns out not to represent the will of the subscriber. This might be regarded as slamming or unsolicited subscriber acquisition.

- After accepting the subscriber's porting request and terminating the contract with the donor on the request of the subscriber, the recipient does not forward the porting request without a legitimate reason and without informing the subscriber, possibly resulting in the loss of the number.

The recipient does not accept the subscriber's legitimate request to cancel the porting.

For the sake of clarity, cases where a recipient has acquired customers based on missing or misleading information that does not comply with general consumer protection legislation do not fall under article 30 of USD.

4.1.3 Abuse by Third Parties

Abuse by third parties may involve circumstances of:

- Unsolicited third party porting. The subscriber requesting the port does not have the right to the number. These cases might be complex as both the requesting subscriber and the number holder often claim to have right of use to the number or to be the correct holder of the number. Examples may include cases of employer vs. employee, or a landlord of a property vs. tenant.
- An operator who fails to update its databases causing failure for the subscriber to receive calls from this operator's network to the ported number.

4.2 PREVENTING ABUSE

Well formulated porting policy and procedures with conditions and deadlines, rights and obligations of all parties, also prevent abuse. Fixed date and time for each step of the procedure (submission of the request, validation of subscriber data, verification by the donor side, etc.) is a good way to achieve efficient number portability. Short deadlines decrease the time for any abusive activities.

In order to reduce the risk of slamming, porting codes from the donor or a written authorisation from the subscriber can be used. This codifies and documents the subscriber's intent to carry out the port. Authorisation forms could also give useful information about subscriber's rights (e.g. right to port and compensation mechanisms) and obligations (e.g. respect to the contract).

For different types of subscribers (residential, business, pre-paid, post-paid) different types of data may be exchanged during the porting process, but clear and strict porting rules and mechanisms for exchanging information between the donor and the recipient will reduce possibilities for abuse. In cases where NP is connected with some other procedures (for example, local loop unbundling), the procedures need to be synchronised with access delivery.

When using an independent central entity, e.g. a central reference database (CRDB) or a clearing house, to exchange porting information, this process should be fast, reliable and should prevent breaches of agreed rules. This central entity will give evidence of possible abuse and will be useful in revealing any abusive activities.

If the porting process is fast the possibility for win-back is reduced considerably. In some countries win-back is prohibited during the porting process, because the porting of a number is treated by the wholesale department of the donor operator which may not pass any information to the retail department (sometimes referred as the principle of "Chinese Wall").

The validation phase in the portability process (e.g. subscriber data verification by the donor operator) shall be as short and efficient as possible and be based on clear and stable parameters. The parameters could include using porting codes or other forms of quick and reliable subscriber identification processes. The validation should be automated as much as possible.

A limited list of valid reasons for rejecting the porting by the donor eliminates the chance of arbitrary decisions. The list of valid reasons should be made either by the NRA or the industry, and this list should be kept as clear as possible. The NRA should take care in introducing donor-controlled and administered porting codes as this may lead to a two-stop-shop porting process unless the codes are automatically generated. Refusal codes which are not clearly defined or are subject to interpretation by the operator might

end up being used (abused) to refuse porting. However the presence of a formal compensation obligation might prevent abuse.

4.3 DELAY OF PORTING

The delay will be seen in the end of the porting process, thereafter the process can be reviewed to find out the reason for the delay and a possible compensation may be assessed.

The following situations, as examples, could cause delay in the porting process:

- The porting is not carried out on the initial porting date agreed upon.
- Agreed porting timeframes are not respected.
- Mistakes by involved parties.
- Deliberate delay (i.e. timeout in procedural timers) by the operators. This will in most cases constitute an abuse.
- Incorrect information provided by the subscriber or the recipient operator.
- Delay on the recipient side (especially, if the recipient does not have full control of the porting process).
- Delays from the third parties (i.e. delay in updating routing tables). In some countries it could be considered as an abuse if a third party (not the donor or the recipient) does not update its routing tables promptly with correct information on ported numbers, e.g. a third party refuses to acknowledge the port or it has faulty updating routines. This will cause a failure in the third party operator network call setup.
- Technical problems within connections between operators and the CRDB.

4.4 PREVENTING DELAY

4.4.1 Measures to Minimize Risks of Delays

The following measures can be envisaged to prevent delay when the cause of the delay is a mistake by involved parties:

- The parameters in the validation procedure have to be clearly defined and the number of parameters must be minimized. These parameters must allow automatic validation (e.g. name of persons or streets are more prone to errors than numeric information).
- CRDB could check as many mandatory parameters as possible automatically before the porting request is forwarded to the donor (e.g. database can check if required fields are filled or not, if the structure of the number is correct, if the identities of the operators involved are correct, etc.). These automatic checks prevent errors and delay in the process.
- Procedure (e.g. by common interfaces to a central validation point) to identify and/or correct errors in porting request by the recipient.

To prevent delay caused by incorrect information, one could envisage the following measures:

- Regulated set of mandatory information that must be contained in the porting request.
- Operators' procedures regarding the submission and validation of the porting request.
- Subscribers must be well-informed about these procedures (subscribers must clearly know where to submit the porting request and what documents they need).

To prevent delay caused by technical and administrative problems all parties involved in the porting process, including the donor, the recipient and the CRDB, shall have reasonable technical and administrative capacity in order to process porting requests without delays.

4.4.2 Good Monitoring Systems

Usage of a CRDB is a common practice in NP. In many countries this database is centralized and is a good place for exchanging porting information between the parties in the porting process. The CRDB operates as a clearing house. It is not only a good tool for preventing abuse but also a very good tool for monitoring and

reducing delays. Clearing house could record every message exchanged between the parties. It could warn parties about any delay occurred. Furthermore, it could provide statistical reports. In this way there is a reliable evidence of all delays, and statistics will point to bottlenecks in the porting process.

4.4.3 Good Validation Procedures

It is important to establish good validation procedures both on the donor's and the recipient's side. Validation, initiated by the recipient, forms the basis of the porting request, and it is processed via the CRDB to the donor for action. Challenges may occur when the given data does not correspond with the donor's information on the relevant subscriber. Furthermore, if the subscriber's information is incorrect, a dialogue with the subscriber is often necessary to prevent additional delay. After a rejection by the donor the recipient needs to contact the subscriber in order to get the correct information or the correct end user. A porting code by the donor identifies the subscriber and minimises errors. This porting code could be provided in an invoice or by request of the subscriber by an SMS, for example.

The donor check of the porting request should be based on simple and specific values authorising the port such as birth date and name, numeric codes etc. The donor check should not rely on unstable values such as correct address information.

Automated processes lower the risk of delay. Manual work increases the time spent and the chance of error. The validation process should not contain burdensome procedures such as scanning of documents and sending them manually to the donor etc.

In the future, it may be envisaged that the role of the CRDB is extended also to include information of all active subscriptions making it possible for the recipient to do real-time look-ups to check if the customer information is correct when the customer is in the sales channel. This would prevent delay due to wrong customer information.

4.4.4 Efficient Processing of the Porting Request

The timeframes for the porting process should be as short as possible but still reasonable. For different types of subscribers and services and in cases when the porting process needs to be synchronized with other actions (e.g. local loop unbundling or multiple play offers) different timers can be applied.

5 SANCTIONS AND COMPENSATIONS

5.1 APPROPRIATE SANCTIONS

5.1.1 Introduction to Sanctions

The Framework Directive [3] Article 21a “Penalties” states as follows:

“Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and the Specific Directives and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be appropriate, effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 25 May 2011 and shall notify it without delay of any subsequent amendment affecting them.”

The Universal Service Directive (Annex 1) Article 30 clause 4.3 states as follows:

“Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf.”

It is the responsibility of Member States to ensure that appropriate sanctions on undertakings are provided for. However, Article 30 in the USD further exemplifies the sanction instruments when saying that among the different appropriate sanctions there should be an obligation to compensate the subscribers. The directive does not state that the compensation instrument is exclusive or on what level the compensation should be. Other sanctions can be added. It must therefore be allowed to sanction the provider in addition to obliging it to compensate the subscriber. In this report we only focus on the compensation-sanction.

Residential and business subscribers do already have the possibility to sue for compensation. Companies may theoretically suffer large economic damages due to loss of service, delay or abuse, and can bring these claims to court. For residential subscribers there is usually a general (small) claims procedure designed to be used on their own, without the need for a solicitor to represent them.

Even in the case of existing compensation mechanisms by the NRA or industry cooperation, the parties have a possibility for a lawsuit and to claim the compensations according to a general law of covering damages or existing dispute resolution schemes.

In most countries residential and business subscribers have already the possibility to get compensation in case of loss of service or delays in porting, based on general law. Lawsuits are more suitable for companies as they may theoretically suffer large economic damages due to loss of service, delay or abuse. Residential customers may also use alternative dispute resolution procedures, if available, which take the general law into account so that no solicitor is needed to represent them. In the case of delay of porting, it may be more difficult to prove the damage than in the case of loss of service.

Even in cases where a relevant alternative dispute resolution mechanism exists, an obligation to compensate subscribers has added value to the average consumer. In that case the subscriber does not need to initialize a procedure to be compensated, which is reasonable as he or she is generally not responsible for the delay or loss of service. Furthermore, a specific compensation mechanism may lead to more transparent compensation levels thereby increasing the awareness of consumers to their rights.

5.1.2 Compensations to Subscribers

The most practical compensation mechanism is perhaps a monetary one. A monetary compensation obligation may give a good incentive for upholding timelines and respecting NP rules. The obligation may be defined as being “reasonable” leaving it up to the providers to set the compensation and the NRA to monitor to which extent the rate is reasonable. Alternatively, the monetary compensation may be defined as a specific amount.

The compensation for delayed porting may be considered analogous to the daily cost of service. However, this could vary from subscriber to subscriber. For prepaid subscribers this may be linked to calculations based on ARPU (Average Revenue Per User [of all prepaid subscribers]). There may be higher rates for abuses or delays that cause actual loss of service. However, one disadvantage of this solution is that the actual amount of compensation is difficult to predict and could be very small and thus give no incentive for preventing abuses.

Another option could be to have a harmonised solution for the whole industry for compensation amounts. This will increase the level of predictability for all parties and it is efficient to apply. For subscribers it is easy to understand and to communicate and may be less likely result in complaints.

In cases of delay the subscriber has to contact the recipient operator to ask for compensation; the recipient gives compensation after ensuring that the porting is completed.

As an alternative to a monetary compensation the subscriber may receive a call credit if he agrees.

5.1.3 Compensation between Operators

Monetary compensation between operators may take place in cases of abuse, delay or refusal of porting.

5.2 RESPONSIBILITY FOR COMPENSATION

As one-stop-shop is the most common process used for portability, the recipient operator should be the contact operator for the subscriber in case of compensation matter. This would not be the case in slamming situations when the subscriber doesn't know the recipient operator. In this case, the subscriber shall contact his present operator (i.e. the donor operator) and this operator shall seek compensation from the other operator.

5.3 COMPETENT AUTHORITY IN COMPENSATION REGULATIONS

The competent authority for compensation issues may vary. The authority responsible for complaints may be the NRA but also other institutions may be relevant, such as dispute resolution boards, consumer protection authorities, public utilities commissions and courts.

In cases of detailed compensation regulation, the operators may initially handle NP complaints and pay compensation in accordance with a regulated compensation scheme. If regulated at a more general level, the NRA or other bodies order the compensation as a sanction, after a complaint process.

6 CONCLUSIONS

From this Report we can draw the following main conclusions:

1. The NRA should monitor abuses and delays in porting process
 - Operators should provide compensation statistics to the NRA on request.
 - The CRDB should provide the NRA with relevant statistics concerning delays in porting processes.
2. The NRA or other relevant national authority should encourage the use of good and well documented validation procedures based on stable parameters and automated processes.
3. The NRA or other relevant national authority, together with the market players, could create a written policy for compensation mechanisms within number portability. The policy should include items such as:
 - Clarification of the roles, including rights and obligations of the subscriber and the donor and recipient operators during the porting process.
 - Situations where compensation to subscribers should take place.Compensation methods, such as monetary compensation or call credits, may be suggested
4. Relevant information on the compensation mechanisms should be given to the subscribers, and this should include:
 - A number portability compensation policy as a part of the subscription contract.
 - Information on subscriber's rights as regards to compensation mechanisms and this could be given at the time of the porting request, for example in a porting request form.
5. The NRA or other relevant national authority should recommend service providers to make information publically available about the time frame to provide number portability and the relevant compensation mechanisms in case of delay and abuse. In this context, information on operators' websites, shops and other sales points should be deemed sufficient.

ANNEX 1: UNIVERSAL SERVICE DIRECTIVE (USD) – ARTICLE 30

Directive 2009/136/EC of The European Parliament and of The Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

Article 30: Facilitating change of provider

1. Member States shall ensure that all subscribers with numbers from the national telephone numbering plan who so request can retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Part C of Annex I.
2. National regulatory authorities shall ensure that pricing between operators and/or service providers related to the provision of number portability is cost-oriented, and that direct charges to subscribers, if any, do not act as a disincentive for subscribers against changing service provider.
3. National regulatory authorities shall not impose retail tariffs for the porting of numbers in a manner that would distort competition, such as by setting specific or common retail tariffs.
4. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, subscribers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day.
 - a. Without prejudice to the first subparagraph, competent national authorities may establish the global process of porting of numbers, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the subscriber. In any event, loss of service during the process of porting shall not exceed one working day. Competent national authorities shall also take into account, where necessary, measures ensuring that subscribers are protected throughout the switching process and are not switched to another provider against their will.
 - b. Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf.
5. Member States shall ensure that contracts concluded between consumers and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months. Member States shall also ensure that undertakings offer customers the possibility to subscribe to a contract with a maximum duration of 12 months.
6. Without prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing service provider.

USD - Annex I, Part C:

Implementation of the number portability provisions referred to in Article 30

The requirement that all subscribers with numbers from the national numbering plan, who so request can retain their number(s) independently of the undertaking providing the service shall apply:

a) in the case of geographic numbers, at a specific location;

and

b) in the case of non-geographic numbers, at any location.

This Part does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

DIRECTIVE 2009/136/EC of The European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

Whereas (47):

In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interests. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications and should be implemented with the minimum delay, so that the number is functionally activated within one working day and the user does not experience a loss of service lasting longer than one working day. Competent national authorities may prescribe the global process of the porting of numbers, taking into account national provisions on contracts and technological developments. Experience in certain Member States has shown that there is a risk of consumers being switched to another provider without having given their consent. While that is a matter that should primarily be addressed by law enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process, including appropriate sanctions, as are necessary to minimise such risks, and to ensure that consumers are protected throughout the switching process without making the process less attractive for them.

ANNEX 2: COUNTRY RELATED COMPENSATION PRACTICES

A.2.1 COMPENSATION TO THE SUBSCRIBER

A.2.1.1 Belgium

In Belgium in case of slamming (means a number is ported without explicit authorisation of the subscriber via the LoA), the operator which slams has to pay a penalty of 750 € to the operator who lost temporarily the subscriber. The subscriber doesn't have to pay any bills to the slamming operator. Complaints are treated by the Ombudsman.

A.2.1.2 Croatia

In Croatia an end-users who submitted the Number Porting Request shall be entitled to compensation in case of delayed number porting amounting to HRK 10 (cca 1.33 €) for every hour of delayed number porting per requested number. The request for the payment of compensation shall be submitted in writing to the recipient operator at the latest within 30 days from the completion of number porting. The recipient operator shall notify the end user about the manner of payment of the compensation for delayed porting caused by the operator within 7 days of the receipt of the request. In case of delayed number porting caused by the donor operator, the recipient operator shall forward the request for the payment of the compensation to the donor operator within one working day. The donor operator shall notify the end-user of the manner of payment of the compensation for delayed number porting caused by it within 7 days from the date of receipt of the request submitted by the recipient operator. The payment of the compensation must be executed within 30 days from the date of submission of the request. The obligation to pay compensation for delayed number porting by the recipient and donor operator shall be established on the basis of records in the CADPN. In case of denial of the request for the payment of compensation, the end user may file a report to the electronic communications inspector.

A.2.1.3 Denmark

In Denmark from 2011 providers of electronic communications networks or services shall pay end-users a reasonable compensation in case of delayed porting and in case of misuse of porting made by the provider or on the provider's behalf. Service providers' obligation to ensure end-users' access to compensation is achieved by setting appropriate compensation arrangements as stipulated in the individual providers' subscription terms. The industry has defined the obligations for the donor and receiving providers in relation to the overall reporting process, as this will determine in every case which provider would carry the cost for compensation. DBA (the Danish NRA, Danish Business Authority) do not supervise the amount of the compensation. Any disputes over the amount of the compensation must be settled in civil action between the relevant providers and end-users.

A.2.1.4 Finland

In Finland there are compensation mechanisms in place for delay or defect in communications service, according to which the consumer can be compensated a fixed amount of 20 €/week for delay (up to 160 €). However, these compensations apply only to consumers and only to contractual relations, i.e. where the delaying or abusing operator has a contract with a consumer (here "consumer" is a general term for residential users, i.e. business users are ruled out).

A.2.1.5 France

Mobile numbers

In France, since 2012, the NRA decision describes the following situations as causing a delay in mobile number porting:

1. porting date postponed compared to initial porting date (except explicit request of the subscriber or any change resulting in an ineligibility of the porting request),

2. inability for the subscriber to make or receive calls on his number the day after the porting date,
3. porting request not taken into account by the recipient provider.

In these three situations, the subscriber has to contact the recipient provider to ask for compensation; the recipient provider gives compensation after ensuring porting is completed. Hence, the right to compensation is on subscriber's demand and situations causing delay in porting are not automatically detected and compensated by the recipient provider.

In case of slamming, the subscriber has to contact the donor provider to ask for compensation.

Amounts are not defined by the NRA decision but by the recipient provider directly, usually through commercial discounts (reduction in bill or credit for prepaid cards). The subscriber can initiate a law suit in case he disagrees with his operator's compensation policy

Fixed numbers

ARCEP's future decision (2013) should describe the same mechanism as what was set up for mobile.

A.2.1.6 Hungary

In Hungary from October 2012 the service providers have to pay the subscribers 17 EUR as a once time fee in case of delayed porting for each number or number block.

A.2.1.7 Italy

In Italy service level agreements (SLA) have been defined, so for example if the donor causes a delay in the portability process, it must compensate the recipient operator. Analogously, if the third party updates the number portability database with a delay, it has to compensate the Recipient operator. In particular, AGCOM defined minimum values in case of overcome of fixed SLA, both in case of delay in the procedure due to the donor (30 €/ solar day) and other parties (10 €/ solar day).

In case of mobile number portability, a simple compensation procedure for the consumer in case of delayed portability or abuse has been defined. The customer asks always to the Recipient. In particular, for the delay a compensation of €2.50 per working day is foreseen up to a maximum of €50. If the delay is up to two working days this simple procedure is not applicable. From the third working day, €7.50 is due. In case of abuse of porting, a compensation of €5 per day is foreseen. The possible responsibility of other subjects for the delay is compensated to the Recipient by the previously mentioned SLA among the operators.

A.2.1.8 Portugal

In Portugal, the number portability Regulation foresees the following compensation mechanism for the subscribers:

- When portability orders are made effective and they do not match the will of subscribers - unsolicited portability, which means the lack of correspondence between the one who placed the order and the ported number(s) as well as the forgery of the signature in the portability order or termination, the recipient shall pay the subscriber a compensation of 20 € per number and per each day the number is unduly ported, to a maximum of 5 000 € per portability order.
- In case of a delay in the implementation of the portability, relatively to the time limit defined, the recipient shall pay the subscriber a compensation amounting to 2,50 € per number, for each day of delay.
- In case of interruption of the service after the porting time due to actions by the recipient, the recipient shall pay the subscriber a compensation amounting to 20 €, per number, for each day of interruption, to a maximum of 5 000 € per portability order.

Payments due to the subscriber pursuant hereto do not require a previous request and shall be made effective in the following bill issued by the recipient or, in the absence of a contractual relationship, through any direct means, namely bank transfer or check, within at the most 30 days from the fact that gave rise to the compensation. This compensation is applicable to all kind of numbers (geographic, mobile and non-geographic). It is foreseen, in a new revision of the Number Portability Regulation, to require from the

provider, detailed information (qualitative and quantitative) about the compensations paid during the period (semester), indicating the reason associated to the paid compensation (e.g. delay or loss of service).

A.2.1.9 United Kingdom

In the UK, subscribers are eligible to receive a payment if they experience a delay or abuse when porting a telephone number, insofar as the subscriber does not receive the porting service that they would have received had the process been properly complied with. Providers of electronic communications networks or services are required to provide subscribers with reasonable compensation for the delay and/or abuse as soon as is reasonably practicable. Communications providers are required to set out in a clear, comprehensive and easily accessible form how access to compensation is provided and paid to the subscriber.

The UK regulator took a non-interventionist approach and considered that communications providers would be best placed to design the detail of the compensation scheme, including determining a reasonable level of compensation for subscribers in different situations of porting delay and/or abuse. The regulator asked that communications providers look to develop an industry-wide compensation scheme where the subscriber's compensation request is considered and settled by the gaining provider (irrespective of whether the gaining provider was at fault), with the gaining provider then reimbursed from an industry porting compensation fund. The regulator plans to review the compensation scheme after a year to assess whether it is delivering the right outcomes for consumers and for communications providers.

A.2.1.10 Switzerland

In Switzerland, there is no regulation applicable in order to compensate subscribers who do not receive the porting service that they would have received had the process been properly complied with. However, service providers usually agree in contractual provisions with business customers compensation conditions in case of failed or delayed porting processes. Such compensation is funded by SLA based compensation schemes between operators if applicable.

Consumers rarely profit of compensation schemes which apply to business customers.

A.2.2 COMPENSATION BETWEEN OPERATORS

A.2.2.1 Belgium

In Belgium, a detailed SLA with compensation mechanisms for fixed number portability exists from 2003. However, in practice the compensation mechanisms of the SLA have not been applied due to the fact that the number portability rules were respected by the operators.

A.2.2.2 Italy

In Italy service level agreements (SLA) have been defined, so for example if the donor causes a delay in the portability process, it must compensate the recipient operator.

A.2.2.3 Portugal

The mentioned Portuguese Regulation, includes also compensation between operators, namely between the recipient and the donor. The recipient shall:

- Compensate the donor and other undertakings with portability obligations for all costs incurred as a result of undue portability orders made effective by reason of his act;
- Pay the donor a compensation amounting to 100 € for each number unduly ported for his exclusive responsibility, to a maximum of 5 000 € per portability order made effective in case DDI ranges are ported;
- Pay the donor a compensation amounting to 100 € per number, to a maximum of 5 000 € per portability order made effective in case DDI ranges are ported, when exists a delay of sending (or not sending) the documentation of the number portability process (e.g. termination of contract, request of number portability).

A.2.2.4 Romania

In Romania, in case an abusive porting is carried out, the subscriber shall be ported back to the donor and the recipient shall pay the donor the costs incurred while porting the respective number.

A.2.2.5 Switzerland

In Switzerland, a detailed SLA with compensation mechanisms for fixed and mobile number portability exists since 2003. Penalty points are accumulated automatically by the CRDB (e.g. timeouts of NP process steps) as well as by manually (e.g. unqualified rejection) by the service providers. The penalty points are invoiced by each service provider to the service providers due for paying the penalty.

ANNEX 3: LIST OF REFERENCES

- [1] Directive 2009/136/EC of The European Parliament and of The Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws
- [2] ECC Report 155: "Number Portability Efficiency: Impact and Analysis of Certain Aspects in Article 30.4 of the Universal Service Directive and General Remarks on NP Efficiency"
- [3] Directive 2009/140/EC of The European Parliament and of The Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services