The right to data portability in the GDPR: Towards user-centric interoperability of digital services

Paul De Hert a,b, Vagelis Papakonstantinou a, Gianclaudio Malgieri a, Laurent Beslay c, Ignacio Sanchez c,*

a Free University of Brussels (VUB-LSTS), Belgium
b Tilburg University (TILT), The Netherlands
c European Commission, Joint Research Centre (JRC), Italy

ABSTRACT

The right to data portability is one of the most important novelties within the EU General Data Protection Regulation, both in terms of warranting control rights to data subjects and in terms of being found at the intersection between data protection and other fields of law (competition law, intellectual property, consumer protection, etc.). It constitutes, thus, a valuable case of development and diffusion of effective user-centric privacy enhancing technologies and a first tool to allow individuals to enjoy the immaterial wealth of their personal data in the data economy. Indeed, a free portability of personal data from one controller to another can be a strong tool for data subjects in order to foster competition of digital services and interoperability of platforms and in order to enhance controllership of individuals on their own data. However, the adopted formulation of the right to data portability in the GDPR could benefit from further clarification: several interpretations are possible, particularly with regard to the object of the right and its interrelation with other rights, potentially leading to additional challenges within its technical implementation. The aim of this article is to propose a first systematic interpretation of this new right, by suggesting a pragmatic and extensive approach, particularly taking advantage as much as possible of the interrelation that this new legal provision can have with regard to the Digital Single Market and the fundamental rights of digital users. In sum, the right to data portability can be approximated under two different perspectives: the minimalist approach (the adieu scenario) and the empowering approach (the fusing scenario), which the authors consider highly preferable.

© 2017 Paul De Hert, Vagelis Papakonstantinou, Gianclaudio Malgieri, Laurent Beslay, Ignacio Sanchez. Published by Elsevier Ltd. This is an open access article under the CC-BY license (http://creativecommons.org/licenses/by/4.0/).
1. Introduction

The right to data portability is one of the most important novelties within the EU General Data Protection Regulation1 (hereafter: GDPR), both in terms of warranting control rights to data subjects and in terms of being found at the intersection between data protection and other fields of law (competition law, intellectual property, consumer protection, etc.).

The first example of portability of users’ data referred to telephone numbers. In the GDPR text it was extended to all digital services. It constitutes, thus, a valuable case of development and diffusion of effective user-centric privacy enhancing technologies and a first tool to allow individuals to enjoy the immaterial wealth of their personal data in the data economy. Indeed, a free portability of personal data from one controller to another can be a strong tool for data subjects in order to foster competition of digital services and interoperability of platforms and in order to enhance controllership of individuals on their own data2. However, the adopted formulation of the right to data portability in the GDPR could benefit from further clarification: several interpretations are possible, particularly with regard to the object of the right and its interrelation with other rights, potentially leading to additional challenges within its technical implementation.

The aim of this article is to propose a first systematic interpretation of this new right, by suggesting a pragmatic and extensive approach, particularly taking advantage as much as possible of the interrelationship that this new legal provision can have with regard to the Digital Single Market and the fundamental rights of digital users.

In this context, Section 2 will outline the legal and historical background of the right to data portability: examples of information portability before the GDPR approval will be given, and the way it was provided for in the first European Commission Proposal for the GDPR will be elaborated. Section 3 will discuss the rationale and impact of data portability, particularly with reference to it constituting a step towards data ownership while also being a problematic right in terms of in—

2. Background and rationale

The right to data portability is a full novelty in the EU data protection framework, since in the Data Protection Directive (95/46/EC) text no relevant references may be found. In fact, no field of law has experimented before with anything resembling to personal data portability3. Actually, in the EU legal framework there are some small references to portability, particularly in the telecommunication sector, e.g., the “Universal Service Directive” (2002/22/EC)4 at Article 30 (as well as recitals 40–42) refers to “number portability”5. The portability of telephone numbers is the theoretical and practical precursor of data portability6. A further step towards portability of information (not only of numbers) can be found in the “Framework Directive” (2002/21/EC)7 at recital 31, where interoperability of Application Program Interfaces personal data can be ported, with respective arguments and counterarguments. These two different approaches affect also the relationship of portability with other rights (particularly the right to access and the right to erasure), this is why Section 6 will explore this issue. In sum, the right to data portability can be approximated under two different perspectives: the minimalist approach (the adieu scenario) and the empowering approach (the fusing scenario), which we consider highly preferable, as outlined in Section 7.

---

3 B. CUSTERS, H. URSIC, Big Data and Data Reuse: a taxonomy of data reuse for balancing big data benefits and personal data protection, International Data Privacy Law, 7 January 2016, 9. However, see interestingly the new French Law (Loi n. 2016-1321 du 7 Octobre 2016 pour une République numérique) which, though approved after the approval of GDPR, is the first example of national law implementing the right to data portability. It has been introduced in the Code de la Consommation (Article 48, with reference to GDPR), as a right which only applies in the consumer area. See also the proposal to provide a portability of bank account number across the EU, see in particular Expert Group on Customer Mobility in Relation to Bank Accounts, Report, 5 June 2007, Brussels, http://ec.europa.eu/internal_market/finservices-retail/docs/baeg/report_en.pdf (accessed 25 May 2017).
دریافت فوری
متن کامل مقاله

امکان دانلود نسخه تمام متن مقالات انگلیسی
امکان دانلود نسخه ترجمه شده مقالات
پذیرش سفارش ترجمه تخصصی
امکان جستجو در آرشیو جامعی از صدها موضوع و هزاران مقاله
امکان دانلود رایگان ۲ صفحه اول هر مقاله
امکان پرداخت اینترنتی با کلیه کارت های عضو شتاب
دانلود فوری مقاله پس از پرداخت آنلاین
پشتیبانی کامل خرید با بهره مندی از سیستم هوشمند رهگیری سفارشات