



## **A Critical Review of the Data Portability Rules** **Aysem Diker, Anglia Ruskin University**

On 25 January 2012, the Commission proposed a reform (General Data Protection Regulation) of the EU's 1995 data protection rules<sup>1</sup> to strengthen online data protection rights and boost Europe's digital economy.

The data protection reform also comprises a new right to data portability, which enables users to transfer their data to another electronic processing system. In other words, the General Data Regulation (GDR) would require businesses to ensure that they can hand over the personal data they possess on a consumer in a usable transferable format. As an example this will allow a Facebook user to download their Facebook profile, photos and data and move it over to Google+ or other competing social networking sites.

The right to data portability was initially introduced by the European Commission under Article 18 of the GDR. Following the review of the General Data Protection Regulation at the European Parliament in March 2014, there have been substantial changes to Article 18 GDR. Article 18 is now merged with the right to access under Article 15 of the GDR and arguably the right to data portability has been dramatically reduced.

In December 2015, Baroness Neville Rolfe, the UK's parliamentary under-secretary of state for the Department for Business, Innovation voiced some concerns about data portability rules and stated that the rules designed to enable consumers to move their data from one platform to another should not be too costly as they can serve as an entry barrier into markets which might have an adverse effect on innovation and competition<sup>1</sup>.

This author concurs that data portability is a key concern for consumer protection and having a competitive market place but argues that the current provisions in the GDR are not fit for the purpose, as they might be too costly and burdensome for small and medium sized companies. Hence, the article suggests applying EU competition rules (TEFU 102) and potentially amending or limiting the scope of the data portability rules in the GDR.