



04.10.2017

OPINION

of the Committee on Industry, Research and Energy

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)
(COM(2017)0010 – C8-0009/2017 – 2017/0003(COD))

Rapporteur: Kaja Kallas

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SHORT JUSTIFICATION

The European Commission proposal for a regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC aims at the protection of fundamental rights and freedoms, in particular the respect for private life, confidentiality of communications and the protection of personal data in the electronic communications sector but also guarantees the free movement of electronic communications data, equipment and services in the Union.

The Rapporteur is generally supportive of the Commission's proposal, in particular the need to adapt it to technological innovation and new means of communication, in order for this legislation to meet its objectives and be fit for purpose.

Free flow of data and protection of personal data in the Union

The rapporteur welcomes the change of legal instrument from a Directive to a Regulation. The implementation of the former Directive has shown diverging implementations and different interpretations of the law. The rapporteur therefore believes that a Regulation could be a better tool to ensure the protection of personal data in communications of natural and legal persons and safeguards the free flow of data across the Union. The rapporteur however believes that there is a need for the European data protection board to play a more important role in ensuring consistency in the enforcement of this Regulation, in particular by issuing guidance and opinions, building on the consistency mechanism set out in Regulation (EU) 2016/679. In addition, the rapporteur welcomes the task given to data protection authorities to enforce this regulation while stressing that data protection should become more and more a horizontal matter and all authorities should cooperate to this effect, providing technical assistance where necessary to break silos.

Scope

The rapporteur supports the extension of the scope of this Regulation to over-the-top services in light of the increasing role of such services in enabling communications, and the link of the proposed regulation with the definitions set out in the Proposed Directive establishing the European electronic communications Code. The rapporteur stresses however the need to ensure consistency and coherence between the definition in the Code and the e-privacy regulation to avoid loopholes but also risks of inapplicability of some provisions to certain types of services.

Technology neutrality

The rapporteur welcomes the intention and efforts of the Commission in trying to address the complex issue of “consent fatigue” and the need to find more user friendly ways to inform end-users and gives them choices with regard to their privacy. The rapporteur however considers that the proposal of the Commission is too focused on websites while the trend is moving more and more towards apps, IoT platforms and so on. The solutions proposed are too narrowly focused on browsers which risks preventing the regulation to stand the test of time. In addition, the proposal makes a strict distinction between first party cookies and third party cookies. The rapporteur believes that this distinction is not future proof in light of the fast-

moving innovation of the digital sector, where a first party cookie can move on to gathering data as a third party cookie, or where other tracking techniques are no longer based on first or third party cookies. The impact on privacy of a cookie should rather be based on its purpose, for instance if the purpose of gathering information is for behaviour based marketing and used cross device, on the types of information it collects, and how the information gathered is shared. The rapporteur therefore does not believe that the strict distinction between first party and third party cookies is the most effective. The user should be better informed, have access to more transparency on the way cookies function, and be able to opt in.

Notice and standardised icons

The rapporteur does not support the possibility of collection of information emitted by terminal equipment to enable it to connect to another device and, or to network equipment, if there is a sign informing users that this is a tracking area. Such provision creates a risk of fears and anxiety among end-users without providing them a concrete and practical option to opt out of being tracked.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) The *Member States* should *be allowed*, within the limits of this Regulation, to *maintain or introduce national provisions to* further *specify and* clarify the application of the rules of this Regulation in order to ensure an effective application and interpretation of those rules. Therefore, *the margin of discretion, which Member States have in this regard, should* maintain a balance between the protection of private life and personal data and the free movement of electronic communications data.

Amendment

(7) The *European Data Protection Board* should, *where necessary, issue guidance and opinions* within the limits of this Regulation, to further clarify the application of the rules of this Regulation in order to ensure an effective application and interpretation of those rules. *Such guidance and opinions should take into account the dual objective of this Regulation and should* therefore maintain a balance between the protection of private life and personal data and the free movement of electronic communications data.

Amendment 2

Proposal for a regulation
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) For the purpose of this Regulation, where the provider of an electronic communications service is not established in the Union, it should designate a representative in the Union. The representative should be designated in writing. The representative may be the same as the one designated under Article 27 of Regulation (EU) 2016/679^{1a}.

^{1a} **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).**

Amendment 3

Proposal for a regulation
Recital 11

Text proposed by the Commission

Amendment

(11) The services used for communications purposes, and the technical means of their delivery, have evolved considerably. End-users increasingly replace traditional voice telephony, text messages (SMS) and electronic mail conveyance services in favour of functionally equivalent online services such as Voice over IP, messaging services and web-based e-mail services. In order to ensure an effective and equal protection of end-users when using functionally equivalent services, this Regulation uses the definition of electronic communications services set forth in the

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[Directive of the European Parliament and of the Council establishing the European Electronic Communications Code²⁴]. That definition encompasses not only internet access services and services consisting wholly or partly in the conveyance of signals but also interpersonal communications services, which may or may not be number-based, such as for example, Voice over IP, messaging services and web-based e-mail services.

The protection of confidentiality of communications is crucial also as regards interpersonal communications services that are ancillary to another service; therefore, such type of services also having a communication functionality should be covered by this Regulation.

²⁴ Commission proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) (COM/2016/0590 final - 2016/0288 (COD)).

[Directive of the European Parliament and of the Council establishing the European Electronic Communications Code²⁴]. That definition encompasses not only internet access services and services consisting wholly or partly in the conveyance of signals but also interpersonal communications services, which may or may not be number-based, such as for example, Voice over IP, messaging services and web-based e-mail services.

²⁴ Commission proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) (COM/2016/0590 final - 2016/0288 (COD)).

Amendment 4

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Connected devices and machines increasingly communicate with each other by using electronic communications networks (Internet of Things). The transmission of machine-to-machine communications involves the conveyance of signals over a network and, hence, usually constitutes an electronic communications service. In order to ensure full protection of the rights to privacy and confidentiality of communications, and to promote a trusted and secure Internet of Things in the digital single market, it is necessary to clarify that this Regulation

Amendment

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should apply to the transmission of machine-to-machine communications. Therefore, the principle of confidentiality enshrined in this Regulation should also apply to the transmission of machine-to-machine communications. Specific safeguards could also be adopted under sectorial legislation, as for instance Directive 2014/53/EU.

should apply to the transmission of machine-to-machine communications. Therefore, the principle of confidentiality enshrined in this Regulation should also apply to the transmission of machine-to-machine communications. ***It should not however apply to machine to machine communications that have no impact on either privacy or the confidentiality of communications, such as transmission between network elements (servers, switches).*** Specific safeguards could also be adopted under sectorial legislation, as for instance Directive 2014/53/EU.

Amendment 5

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Intelligent Transport Systems need additional protection in this Regulation regarding communications data as connected cars generate, transmit and store users' personal data. Personal privacy of consumers in connected vehicles needs to be guaranteed, as third parties access and use driver and driving data.

Amendment 6

Proposal for a regulation Recital 13

Text proposed by the Commission

Amendment

(13) The development of fast and efficient wireless technologies has fostered the increasing availability for the public of internet access via wireless networks accessible by anyone in public and semi-private spaces such as 'hotspots' situated at different places within a city, department stores, shopping malls ***and*** hospitals. To

(13) The development of fast and efficient wireless technologies has fostered the increasing availability for the public of internet access via wireless networks accessible by anyone in public and semi-private spaces such as 'hotspots' situated at different places within a city, department stores, shopping malls, ***airports, hotels,***

the extent that those communications networks are provided to an undefined group of end-users, the confidentiality of the communications transmitted through such networks should be protected. The fact that wireless electronic communications services may be ancillary to other services should not stand in the way of ensuring the protection of confidentiality of communications data and application of this Regulation. Therefore, this Regulation should apply to electronic communications data using electronic communications services and public communications networks. In contrast, this Regulation should not apply to closed groups of end-users such as corporate networks, access to which is limited to members of the corporation.

universities, hospitals or other such internet access points. To the extent that those communications networks are provided to an undefined group of end-users, the confidentiality of the communications transmitted through such networks should be protected. The fact that wireless electronic communications services may be ancillary to other services should not stand in the way of ensuring the protection of confidentiality of communications data and application of this Regulation. Therefore, this Regulation should apply to electronic communications data using electronic communications services and public communications networks. In contrast, this Regulation should not apply to closed groups of end-users such as corporate networks, access to which is limited to members of the corporation. ***The mere act of requiring a password should not be considered as providing access to a closed group of end-users if the access is provided to an undefined group of end-users.***

Amendment 7

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) Electronic communications data should be defined in a sufficiently broad and technology neutral way so as to encompass any information concerning the content transmitted or exchanged (electronic communications content) and the information concerning an end-user of electronic communications services processed for the purposes of transmitting, distributing or enabling the exchange of electronic communications content; including data to trace and identify the source and destination of a communication, geographical location and the date, time, duration and the type of communication.

Amendment

(14) Electronic communications data should be defined in a sufficiently broad and technology neutral way so as to encompass any information concerning the content transmitted or exchanged (electronic communications content) and the information concerning an end-user of electronic communications services processed for the purposes of transmitting, distributing or enabling the exchange of electronic communications content; including data to trace and identify the source and destination of a communication, geographical location and the date, time, duration and the type of communication. ***It***

Whether such signals and the related data are conveyed by wire, radio, optical or electromagnetic means, including satellite networks, cable networks, fixed (circuit- and packet-switched, including internet) and mobile terrestrial networks, electricity cable systems, the data related to such signals should be considered as electronic communications metadata and therefore be subject to the provisions of this Regulation. Electronic communications metadata may include information that is part of the subscription to the service when such information is processed for the purposes of transmitting, distributing or exchanging electronic communications content.

should also include location data, such as for example, the actual or inferred location of the terminal equipment, the location of the terminal equipment from or to which a phone call or an internet connection has been made, or the Wi-Fi hotspot that a device is connected to, as well as data necessary to identify end-users' terminal equipment. Whether such signals and the related data are conveyed by wire, radio, optical or electromagnetic means, including satellite networks, cable networks, fixed (circuit and packet-switched, including internet) and mobile terrestrial networks, electricity cable systems, the data related to such signals should be considered as electronic communications metadata and therefore be subject to the provisions of this Regulation. Electronic communications metadata may include information that is part of the subscription to the service when such information is processed for the purposes of transmitting, distributing or exchanging electronic communications content.

Amendment 8

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15 a) Anonymity of data should be considered as an extra layer of protection and confidentiality. Relative provisions should be put in place to anonymise data by default, when possible. Such procedures should be accompanied by a series of tests serving as a proof of anonymity.

Amendment 9

Proposal for a regulation Recital 16

(16) The prohibition of storage of communications is not intended to prohibit any automatic, intermediate and transient storage of this information insofar as this takes place for the sole purpose of carrying out the transmission in the electronic communications network. It should not prohibit either the processing of electronic communications data to ensure the security and continuity of the electronic communications services, including checking security threats such as the presence of malware or the processing of metadata to ensure the necessary quality of service requirements, such as latency, jitter etc.

(16) The prohibition of storage of communications is not intended to prohibit any automatic, intermediate and transient storage of this information insofar as this takes place for the sole purpose of carrying out the transmission in the electronic communications network. It should not prohibit either the processing of electronic communications data to ensure the security, **confidentiality, integrity, availability, authenticity** and continuity of the electronic communications services **and networks**, including checking security threats such as the presence of malware or the processing of metadata to ensure the necessary quality of service requirements, such as latency, jitter etc.

Amendment 10

Proposal for a regulation

Recital 17

(17) The processing of electronic communications data can be useful for businesses, consumers and society as a whole. *Vis-à-vis* Directive 2002/58/EC, this Regulation broadens the possibilities for providers of electronic communications services to process electronic communications metadata, based on end-users consent. However, end-users attach great importance to the confidentiality of their communications, including their online activities, and that they want to control the use of electronic communications data for purposes other than conveying the communication. Therefore, this Regulation should require providers of electronic communications services to obtain end-users' consent to process electronic communications metadata, which should include data on the location of the device generated for the

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purposes of granting and maintaining access and connection to the service. Location data that is generated other than in the context of providing electronic communications services should not be considered as metadata. Examples of commercial usages of electronic communications metadata by providers of electronic communications services may include the provision of heat maps; a graphical representation of data using colors to indicate the presence of individuals. To display the traffic movements in certain directions during a certain period of time, an identifier is necessary to link the positions of individuals at certain time intervals. This identifier would be missing if anonymous data were to be used and such movement could not be displayed. Such usage of electronic communications metadata could, for example, benefit public authorities and public transport operators to define where to develop new infrastructure, based on the usage of and pressure on the existing structure. Where a type of processing of electronic communications metadata, in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, a data protection impact assessment and, as the case may be, a consultation of the supervisory authority should take place prior to the processing, in accordance with Articles 35 and 36 of Regulation (EU) 2016/679.

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Amendment 11

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) The content of electronic communications pertains to the essence of the fundamental right to respect for private and family life, home and communications protected under Article 7 of the Charter. Any interference with the content of electronic communications should be allowed only under very clear defined conditions, for specific purposes and be subject to adequate safeguards against abuse. This Regulation provides for the possibility of providers of electronic communications services to process electronic communications data in transit, with the informed consent of all the end-users concerned. For example, providers may offer services that entail the scanning of emails to remove certain pre-defined material. Given the sensitivity of the content of communications, this Regulation sets forth a presumption that the processing of such content data will result in high risks to the rights and freedoms of natural persons. When processing such type of data, the provider of the electronic communications service should always consult the supervisory authority prior to the processing. Such consultation should be in accordance with Article 36 (2) and (3) of Regulation (EU) 2016/679. The presumption does not encompass the processing of content data to provide a service requested by the end-user where the end-user has consented to such processing and it is carried out for the purposes and duration strictly necessary and proportionate for such service. After electronic communications content has been sent by the end-user and received by the intended end-user or end-users, it may be recorded or stored by the end-user, end-users or by a third party entrusted by them

Amendment

(19) The content of electronic communications pertains to the essence of the fundamental right to respect for private and family life, home and communications protected under Article 7 of the Charter. Any interference with the content of electronic communications should be allowed only under very clear defined conditions, for specific purposes and be subject to adequate safeguards against abuse. This Regulation provides for the possibility of providers of electronic communications services to process electronic communications data in transit, with the informed consent of all the end-users concerned. For example, providers may offer services that entail the scanning of emails to remove certain pre-defined material. ***For services that are provided to users engaged in purely personal or household activities, for example text to voice service, organisation of the mailbox or SPAM filter service, the consent of the end-user requesting the service should be sufficient.*** Given the sensitivity of the content of communications, this Regulation sets forth a presumption that the processing of such content data will result in high risks to the rights and freedoms of natural persons. When processing such type of data, the provider of the electronic communications service should always consult the supervisory authority prior to the processing. Such consultation should be in accordance with Article 36 (2) and (3) of Regulation (EU) 2016/679. The presumption does not encompass the processing of content data to provide a service requested by the end-user where the end-user has consented to such processing and it is carried out for the purposes and duration strictly necessary

to record or store such data. Any processing of such data must comply with Regulation (EU) 2016/679.

and proportionate for such service. After electronic communications content has been sent by the end-user and received by the intended end-user or end-users, it may be recorded or stored by the end-user, end-users or by a third party entrusted by them to record or store such data. Any processing of such data must comply with Regulation (EU) 2016/679. ***Where communications data are stored by a third party, this third party should ensure that any information whose processing is not necessary to provide the service requested by the end-user is protected with state of the art security measures applied from end to end, including cryptographic methods such as encryption.***

Amendment 12

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) The methods used for providing information and obtaining end-user's consent should be ***as user-friendly as possible***. Given the ubiquitous use of tracking cookies and other tracking techniques, end-users are increasingly requested to provide consent to store such tracking cookies in their terminal equipment. As a result, end-users are overloaded with requests to provide consent. The use of technical means to provide consent, for example, through transparent and user-friendly settings, may address this problem. Therefore, this Regulation should provide for the possibility to express consent by using the appropriate settings of a browser or other application. The choices made by end-users when establishing its general privacy settings of a browser or other application ***should be binding on, and enforceable against, any third parties. Web browsers are a type of software application that***

Amendment

(22) The methods used for providing information and obtaining end-user's consent should be ***clear and*** user-friendly. Given the ubiquitous use of tracking cookies and other tracking techniques, end-users are increasingly requested to provide consent to store such tracking cookies in their terminal equipment. As a result, end-users are overloaded with requests to provide consent. The use of technical means to provide consent, for example, through transparent and user-friendly settings, may address this problem. Therefore, this Regulation should provide for the possibility to express consent by using the appropriate ***technical*** settings of a browser or other application settings of a browser or other application. The choices made by end-users when establishing its general privacy settings of a browser or other application, ***which help them*** to control the flow of information to and from the terminal equipment, ***should be binding***

permits the retrieval and presentation of information on the internet. Other types of applications, such as the ones that permit calling and messaging or provide route guidance, have also the same capabilities. Web browsers mediate much of what occurs between the end-user and the website. From this perspective, they are in a privileged position to play an active role to help the end-user to control the flow of information to and from the terminal equipment. More particularly web browsers may be used as gatekeepers, thus helping end-users to prevent information from their terminal equipment (for example smart phone, tablet or computer) from being accessed or stored.

on, and enforceable against, unauthorised parties. In addition, in the light of the pace of innovation, the increasing use and range of devices that permit communications and the increase in cross-device tracking, it is necessary for this Regulation to remain technology neutral to meet its objectives.

Amendment 13

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) The principles of data protection by design and by default were codified under Article 25 of Regulation (EU) 2016/679. Currently, the default settings for cookies are set in most current browsers to ‘accept all cookies’. Therefore providers of software enabling the retrieval and presentation of information on the internet should have an obligation to configure the software so that it offers the option ***to prevent third parties from storing information on the terminal equipment; this is often presented as ‘reject third party cookies’***. End-users should be offered a set of privacy setting options, ranging from higher (for example, ‘never accept cookies’) to lower (for example, ‘always accept cookies’) and intermediate ***(for example, ‘reject third party cookies’ or ‘only accept first party cookies’)***. Such privacy settings should be presented in an easily visible and intelligible manner.

Amendment

(23) The principles of data protection by design and by default were codified under Article 25 of Regulation (EU) 2016/679. Currently, the default settings for cookies are set in most current browsers to ‘accept all cookies’, ***which prevents end-users from providing informed and freely given consent, overloading them with requests.*** Therefore providers of software enabling the retrieval and presentation of information on the internet should ***inform end-users of the possibility to express their consent using appropriate technical settings. For that purpose, they should*** have an obligation to configure the software so that it offers the option ***for end-users to choose whether to reject or to accept trackers or cookies that are not necessary for the provision of the service requested by the end-user, after being informed of the function of the trackers or cookies, how they are used, and how the information gathered is shared.*** End-users

should be offered a set of privacy setting options, ranging from higher (for example, ‘never accept *trackers and cookies*’) to lower (for example, ‘always accept *trackers and cookies*’) and intermediate *options according to the types of information they are willing to share, the parties they agree to share it with, the purposes of a cookie or tracker. It should also provide them with the options to customise their settings by accepting trackers or cookies for whitelisted information society services*. End-users should also have the possibility to opt out from cross-device tracking. Where the end-user accepts cookies for the purpose of targeted advertising, the end-user should also be able to correct the information gathered about him or her to prevent the possible harm caused by inaccurate information. Privacy settings should be presented in an *objective*, easily visible and intelligible manner.

Amendment 14

Proposal for a regulation Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) In order to improve trust between end-users and parties concerned with the processing of information stored in terminal equipment, and to limit the amount of tracking that negatively impacts privacy, the ability for end-users to develop their own profile, with for instance self-authored tools, should be promoted as an alternative to tracking.

Amendment 15

Proposal for a regulation Recital 24

(24) For web browsers to be able to obtain end-users' consent as defined under Regulation (EU) 2016/679, **for example, to the storage of third party tracking cookies**, they should, among others, require a clear affirmative action from the end-user of terminal equipment to signify his or her freely given, specific informed, and unambiguous agreement to the storage and access of **such** cookies in and from the terminal equipment. Such action may be considered to be affirmative, for example, if end-users are required to actively select **'accept third party cookies'** to confirm their agreement **and are** given the necessary information to make the choice. To this end, it is necessary to require providers of software enabling access to internet that, at the moment of installation, end-users are informed about the possibility to choose the privacy settings among the various options and ask them to make a choice. Information provided should not dissuade end-users from selecting higher privacy settings and should include relevant information about the risks associated to allowing **third party** cookies to be stored in the computer, including the compilation of long-term records of individuals' browsing histories and the use of such records to send targeted advertising. Web browsers **are encouraged to** provide easy ways for end-users to change the privacy settings at any time during use and to allow the user to make exceptions for or to whitelist certain **websites or to specify for which websites (third) party** cookies are always or never allowed.

(24) For web browsers **or other applications** to be able to obtain end-users' consent as defined under Regulation (EU) 2016/679, they should, among others, require a clear affirmative action from the end-user of terminal equipment to signify his or her freely given, specific informed, and unambiguous agreement to the storage and access of **tracking cookies or other tracking mechanisms** in and from the terminal equipment. Such action may be considered to be affirmative, for example, if end-users are required to actively select **cookies or trackers that process data beyond what is necessary for the service to function** to confirm their agreement, **after they have been provided with different options and have been** given the necessary information to make the choice. **Such information should include the possible impact on the customer experience or on the end-user's ability to access all the functionalities of the website. Consent should not be valid for cross-device tracking if the end-user was not informed and is not able to opt out.** To this end, it is necessary to require providers of software enabling access to internet that, at the moment of installation, end-users are informed about the possibility to choose the privacy settings among the various options and ask them to make a choice. Information provided should not dissuade end-users from selecting higher privacy settings and should include relevant information about the risks associated to allowing **tracking cookies or other tracking mechanisms** to be stored in the computer, including the compilation of long-term records of individuals' browsing histories and the use of such records to send targeted advertising. Web browsers **or other applications should** provide easy ways for end-users to change the privacy settings at any time during use and to allow the user to make exceptions for or to

whitelist certain *parties or* cookies *that* are always or never allowed. ***Where a business model is based on targeted advertising, consent should not be considered as freely given if access to the service is made conditional on data processing. In such cases, the end-user should be provided with other fair and reasonable options that do not process his or her communications data, such as i.e. subscription, paid access, or limited access to parts of the service.***

Amendment 16

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) Accessing electronic communications networks requires the regular emission of certain data packets in order to discover or maintain a connection with the network or other devices on the network. Furthermore, devices must have a unique address assigned in order to be identifiable on that network. Wireless and cellular telephone standards similarly involve the emission of active signals containing unique identifiers such as a MAC address, the IMEI (International Mobile Station Equipment Identity), the IMSI etc. A single wireless base station (i.e. a transmitter and receiver), such as a wireless access point, has a specific range within which such information may be captured. Service providers have emerged who offer tracking services based on the scanning of equipment related information with diverse functionalities, including people counting, providing data on the number of people waiting in line, ascertaining the number of people in a specific area, etc. This information may be used for more intrusive purposes, such as to send commercial messages to end-users, for example when they enter stores, with

Amendment

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personalized offers. While some of these functionalities do not entail high privacy risks, others do, for example, those involving the tracking of individuals over time, including repeated visits to specified locations. Providers engaged in such practices should **display prominent notices located on the edge of the area of coverage informing** end-users prior to entering the defined area that the technology is in operation within a given perimeter, the purpose of the tracking, the person responsible for it and the existence of any measure the end-user of the terminal equipment can take to minimize or stop the collection. Additional information should be provided where personal data are collected pursuant to Article 13 of Regulation (EU) 2016/679.

personalized offers. While some of these functionalities do not entail high privacy risks, others do, for example, those involving the tracking of individuals over time, including repeated visits to specified locations. Providers engaged in such practices. **Providers engaged in such practices should ask for the consent of the end-users concerned, after providing them with information, through a notification to their terminal equipment,** prior to entering the defined area that the technology is in operation within a given perimeter, the purpose of the tracking, the person responsible for it and the existence of any measure the end-user of the terminal equipment can take to minimize or stop the collection. Additional information should be provided where personal data are collected pursuant to Article 13 of Regulation (EU)2016/679. **Where it is not possible to obtain end-user consent, such practices should be limited to what is strictly necessary for the purpose of statistical counting and should be limited in time and space. The data should be made anonymous or erased as soon as it is no longer needed for this purpose.**

Amendment 17

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) When the processing of electronic communications data by providers of electronic communications services falls within its scope, this Regulation **should provide for** the possibility for the Union or Member States under specific conditions to restrict by law certain obligations and rights when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard specific public interests, including national security, defence, **public security** and the

Amendment

(26) When the processing of electronic communications data by providers of electronic communications services falls within its scope, this Regulation **is without prejudice to** the possibility for the Union or Member States under specific conditions **set out in this regulation** to restrict by law certain obligations and rights, when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard specific public interests, including national security,

prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security **and other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, or a monitoring, inspection or regulatory function connected to the exercise of official authority for such interests.** Therefore, this Regulation should not affect the ability of Member States to carry out lawful interception of electronic communications or take other measures, if necessary and proportionate to safeguard the public interests mentioned above, in accordance with the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the Court of Justice of the European Union and of the European Court of Human Rights. Providers of electronic communications services should provide for appropriate procedures to facilitate legitimate requests of competent authorities, where relevant also taking into account the role of the representative designated pursuant to Article 3(3).

defence, and the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. Therefore, this Regulation should not affect the ability of Member States to carry out lawful interception of electronic communications or take other measures, if necessary and proportionate to safeguard the public interests mentioned above, **following a court order and** in accordance with the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the Court of Justice of the European Union and of the European Court of Human Rights. Providers of electronic communications services should provide for appropriate procedures to facilitate legitimate requests of competent authorities, where relevant also taking into account the role of the representative designated pursuant to Article 3(3).

Amendment 18

Proposal for a regulation

Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) In order to safeguard the security and integrity of networks and services, the use of end-to-end encryption should be promoted and, where necessary, be mandatory in accordance with the principles of security and privacy by design. Member States should not impose

any obligation on encryption providers, on providers of electronic communications services or on any other organisations (at any level of the supply chain) that would result in the weakening of the security of their networks and services, such as the creation or facilitation of "backdoors".

Amendment 19

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) Publicly available directories of end-users of electronic communications services are widely distributed. Publicly available directories means any directory or service containing end-users information such as phone numbers (including mobile phone numbers), email address contact details and includes inquiry services. The right to privacy and to protection of the personal data of a natural person requires that end-users that are natural persons are asked for consent before their personal data are included in a directory. The legitimate interest of legal entities requires that end-users that are legal entities have the right to object to the data related to them being included in a directory.

Amendment

(30) Publicly available directories of end-users of electronic communications services are widely distributed. Publicly available directories means any directory or service containing end-users information such as phone numbers (including mobile phone numbers), email address contact details and includes inquiry services. The right to privacy and to protection of the personal data of a natural person *acting out of his/her business capacity* requires that end-users that are natural persons are asked for consent before their personal data are included in a directory. The legitimate interest of legal entities *and natural persons acting in their business capacity* requires that end-users that are legal entities *and natural persons acting in their business capacity* have the right to object to the data related to them being included in a directory. *In cases where the information was not originally collected for the purposes of a publicly available directory, the first party to collect the data should be the one to request the consent of the end-user concerned. Consent should be collected by the electronic communications service provider at the moment of signing the contract for such service.*

Amendment 20

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) If end-users that are natural persons give their consent to their data being included in such directories, they should be able to determine on a consent basis which categories of personal data are included in the directory (for example name, email address, home address, user name, phone number). In addition, ***providers of publicly available directories*** should ***inform the end-users*** of the purposes of the directory and of the search functions of the directory before including them in that directory. End-users should be able to determine by consent on the basis of which categories of personal data their contact details can be searched. The categories of personal data included in the directory and the categories of personal data on the basis of which the end-user's contact details can be searched should not necessarily be the same.

Amendment

(31) If end-users that are natural persons give their consent to their data being included in such directories, they should be able to determine on a consent basis which categories of personal data are included in the directory (for example name, email address, home address, user name, phone number). In addition, ***upon giving their consent the end-users*** should ***be informed*** of the purposes of the directory and of the search functions of the directory before including them in that directory. End-users should be able to determine by consent on the basis of which categories of personal data their contact details can be searched. The categories of personal data included in the directory and the categories of personal data on the basis of which the end-user's contact details can be searched should not necessarily be the same. ***The providers of publicly available directories should provide information about the search options, as well as if new options and functions of the directories are available in the publicly available directories.***

Amendment 21

Proposal for a regulation

Recital 37

Text proposed by the Commission

(37) Service providers who offer electronic communications services should ***inform end- users of measures they can take to protect the security of their communications for instance by using specific types of software or encryption technologies. The requirement to inform***

Amendment

(37) Service providers who offer electronic communications services should ***comply with*** the security ***obligations laid down in*** Article 32 of Regulation (EU) 2016/679 ***and Article 40 of [Directive of the European Parliament and of the Council establishing the European***

end-users of particular security risks does not discharge a service provider from the obligation to take, at its own costs, appropriate and immediate measures to remedy any new, unforeseen security risks and restore the normal security level of the service. The provision of information about security risks to the subscriber should be free of charge. Security is appraised in the light of Article 32 of Regulation (EU) 2016/679.

Electronic Communications Code]. Providers of electronic communications services should in particular ensure that there is sufficient protection in place against unauthorised access or alterations to the electronic communications data and that the confidentiality and integrity of the communication are guaranteed by state of the art technical measures, such as cryptographic methods, including end-to-end encryption of the electronic communications data.

Amendment 22

Proposal for a regulation Recital 41

Text proposed by the Commission

(41) *In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of the information to be presented, including by means of standardised icons in order to give an easily visible and intelligible overview of the collection of information emitted by terminal equipment, its purpose, the person responsible for it and of any measure the end-user of the terminal equipment can take to minimise the collection. Delegated acts are also necessary to specify a code to identify direct marketing calls including those made through automated calling and communication systems. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in*

Amendment

(41) *In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission when provided for by this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.*

accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016⁸. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Furthermore, in order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission when provided for by this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

⁸ *Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1–14).*

Amendment 23

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation ensures free movement of electronic communications data and electronic communications services within the Union, which shall be neither restricted nor prohibited for reasons related to the respect for the private life and communications of natural and legal persons and the protection of natural persons with regard to the processing of personal data.

Amendment

2. This Regulation ensures ***the accurate and sustainable functioning of the digital single market and the*** free movement of electronic communications data and electronic communications services within the Union, which shall be neither restricted nor prohibited for reasons related to the respect for the private life and communications of natural and legal persons and the protection of natural persons with regard to the processing of personal data.

Justification

Regulation of the Digital Single Market is needed in order to put safeguards in place.

Amendment 24

Proposal for a regulation

Article 1 – paragraph 3

Text proposed by the Commission

3. The provisions of this Regulation particularise and complement Regulation (EU) 2016/679 by laying down specific rules for the purposes mentioned in paragraphs 1 and 2.

Amendment

3. The provisions of this Regulation ***does not lower the level of protection enjoyed by natural persons under the Regulation (EU) 2016/679 but*** particularise and complement Regulation (EU) 2016/679 by laying down specific rules for the purposes mentioned in paragraphs 1 and 2.

Amendment 25

Proposal for a regulation

Article 2 – paragraph 1

Text proposed by the Commission

1. This Regulation applies to the processing of electronic communications data carried out ***in connection with the provision and the use of electronic communications*** services and to information related to the terminal equipment of end-users.

Amendment

1. This Regulation applies to the processing of electronic communications data carried out ***when making available and utilizing electronic communications services, network*** services, and to information related to the terminal equipment of end-users.

Justification

There should be a distinct mentioning of "electronic communication services" and "network services", in order to ensure a level-playing field.

Amendment 26

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the provider of an electronic communications service is not established in the Union it shall designate in writing a representative in the Union.

2. Where the provider of an electronic communications service is not established in the Union it shall designate, **and prior to the start of its activity within the Union**, in writing a representative in the Union.

Amendment 27

Proposal for a regulation Article 4 – paragraph 2

Text proposed by the Commission

2. *For the purposes of point (b) of paragraph 1, the definition of ‘interpersonal communications service’ shall include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service.*

Amendment

deleted

Amendment 28

Proposal for a regulation Article 4 – paragraph 3 – point f

Text proposed by the Commission

(f) ‘direct marketing communications’ means any form of advertising, whether written **or oral, sent** to one or more identified or identifiable end-users of electronic communications services, including the use of automated calling and communication systems with or without human interaction, electronic mail, SMS, etc.;

Amendment

(f) ‘direct marketing communications’ means any form of advertising, whether **in** written, **audio, video, oral or any other format, sent, broadcast, served or presented** to one or more identified or identifiable end-users of electronic communications services, including the use of automated calling and communication systems with or without human interaction, electronic mail, SMS, etc.;

Amendment 29

Proposal for a regulation Article 4 – paragraph 3 – point g

Text proposed by the Commission

(g) ‘direct marketing voice-to-voice calls’ means live calls, which do not entail the use of automated calling systems and communication systems;

Amendment

(g) ‘direct marketing voice-to-voice calls’ means live calls, which do not entail the use of automated calling systems and communication systems; ***this shall not include calls and text messages linked to Amber Alert;***

Justification

Amber Alert - The European Child Rescue Alert and Police Network on Missing Children, as supported by the European Parliament' Written Declaration 7/2016

Amendment 30

**Proposal for a regulation
Chapter 2 – title**

Text proposed by the Commission

PROTECTION OF ELECTRONIC COMMUNICATIONS OF NATURAL AND LEGAL PERSONS AND OF INFORMATION STORED IN THEIR TERMINAL EQUIPMENT

Amendment

PROTECTION OF ELECTRONIC COMMUNICATIONS OF NATURAL AND LEGAL PERSONS AND OF INFORMATION STORED IN, ***PROCESSED BY AND RELATED TO*** THEIR TERMINAL EQUIPMENT

Amendment 31

**Proposal for a regulation
Article 5 – paragraph 1**

Text proposed by the Commission

Electronic communications data shall be confidential. Any interference with electronic communications data, such as by listening, tapping, storing, monitoring, scanning or other kinds of interception, surveillance ***or processing*** of electronic communications data, by persons other than the end-users, shall be prohibited, except when permitted by this Regulation.

Amendment

Electronic communications data shall be confidential. Any interference with electronic communications data, such as by listening, tapping, storing, monitoring, scanning or other kinds of interception, surveillance of electronic communications data, by persons other than the end-users, shall be prohibited, except when permitted by this Regulation.

Amendment 32

Proposal for a regulation

Article 6

Text proposed by the Commission

Article 6

Permitted processing of electronic communications data

1. Providers of electronic communications networks and services may process electronic communications data if:

(a) it is necessary to achieve the transmission of the communication, for the duration necessary for that purpose; or

(b) it is necessary *to maintain or restore* the security of electronic communications *networks and services*, or detect technical faults and/or errors in the transmission of electronic communications, for the duration necessary for that purpose.

2. Providers of electronic communications services may process electronic communications metadata if:

(a) it is necessary to meet mandatory quality of service requirements pursuant to [Directive establishing the European Electronic Communications Code] or Regulation (EU) **2015/2120**²⁸ for the duration necessary for that purpose; or

Amendment

Article 6

Permitted processing of electronic communications data

1. Providers of electronic communications networks and services may process electronic communications data if:

(a) it is necessary to achieve the transmission of the communication, for the duration necessary for that purpose; or

(b) it is *strictly necessary for the purpose of ensuring* the security *of the network or services or to maintain, restore or ensure the availability, security, integrity, confidentiality or authenticity* of electronic communications, or *to* detect technical faults and/or errors in the transmission of electronic communications, for the duration necessary for that purpose;

2. Providers of electronic communications services *and network providers* may process electronic communications metadata if:

(a) it is necessary to meet mandatory quality of service requirements pursuant to [Directive establishing the European Electronic Communications Code] or Regulation (EU) **2015/2120**²⁸ for the duration necessary for that purpose, or

(a a) it is necessary in order to locate an individual following a call to emergency services, including for an Amber Alert, even if the end-user has denied or not given consent for his or her metadata to be processed, provided that the location data is strictly used for that purpose and is erased as soon as it is no longer needed for the purpose of the transmission of a communication ; or

(b) it is necessary for billing, **calculating** interconnection payments, detecting or stopping fraudulent, or abusive use of, or subscription to, electronic communications services; or

(c) the end-user concerned has given his or her consent to the processing of his or her communications metadata for one or more specified purposes, including for the provision of specific services to such end-users, provided that the purpose or purposes concerned could not be fulfilled by processing **information** that is made anonymous.

3. Providers of **the** electronic communications services may process electronic communications content only:

(a) for the sole purpose of the provision of a specific service to an end-user, if the end-user or end-users concerned have given their consent to the processing of his or her electronic communications content **and** the provision of that service cannot be fulfilled without the processing of such content; **or**

(b) it is necessary for billing, interconnection payments, detecting or stopping fraudulent, or abusive use of, or subscription to, electronic communications services; or

(c) the end-user concerned has given his or her consent to the processing of his or her communications metadata for one or more specified purposes, including for the provision of specific services to such end-users, provided that the purpose or purposes concerned could not be fulfilled by processing **data** that is made anonymous; **or**

(c a) the processing of the data for another specified purpose is compatible with the purpose for which the data were initially collected and is subject to specific safeguards, especially pseudonymisation, as set forth in Article 6(4) of Regulation (EU) 2016/679.

3. Providers of electronic communications services **and network providers** may process electronic communications content only :

(a) for the sole purpose of the provision of a specific service to an end-user, if the end-user or end-users concerned have given their consent to the processing of his or her electronic communications content, **for the duration necessary for that purpose, provided that** the provision of that **specific** service cannot be fulfilled without the processing of such content **by the provider;**

(a a) for the sole purpose of the provision of a specific service explicitly requested by an end-user in the course of a purely personal usage or household activity, if he or she has consented to the processing of his or her electronic communications content, and that service cannot be provided without the processing of such content, where such processing produces effects solely in relation to the end-user who requested the service and does not adversely affect the fundamental

(b) if all end-users concerned have given their consent to the processing of their electronic communications content for one or more specified purposes that cannot be fulfilled by processing information that is made anonymous, and the provider has consulted the supervisory authority. Points (2) and (3) of Article 36 of Regulation (EU) 2016/679 shall apply to the consultation of the supervisory authority.

²⁸ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1–18).

rights of other users ; or

(b) if all end-users concerned have given their consent to the processing of their electronic communications content for one or more specified purposes that cannot be fulfilled by processing information that is made anonymous, and the provider has consulted the supervisory authority. Points (2) and (3) of Article 36 of Regulation (EU) 2016/679 shall apply to the consultation of the supervisory authority.

²⁸ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1–18).

Amendment 33

Proposal for a regulation **Article 7**

Text proposed by the Commission

Article 7

Storage and erasure of electronic communications data

1. Without prejudice to point (b) of Article 6(1) and points (a) and (b) of Article 6(3), the provider of the electronic communications service shall erase electronic communications content or make that data anonymous after receipt of electronic communication content by the intended recipient or recipients. Such data may be recorded or stored by the end-users or by a third party entrusted by them to record, store or otherwise process such

Amendment

Article 7

Storage and erasure of electronic communications data

1. Without prejudice to point (b) of Article 6(1) and points (a), **(aa)** and (b) of Article 6(3), the provider of the electronic communications service shall erase electronic communications content or, make that data anonymous after receipt of electronic communication content by the intended recipient or recipients. Such data may be recorded or stored by the end-users or by a third party entrusted by them to record, store or otherwise process such

data, in accordance with Regulation (EU) 2016/679.

2. Without prejudice to point (b) of Article 6(1) and points (a) **and** (c) of Article 6(2), the provider of the electronic communications service shall erase electronic communications metadata or make that data anonymous when it is no longer needed for the purpose of the transmission of a communication.

3. Where the processing of electronic communications metadata takes place for the purpose of billing in accordance with point (b) of Article 6(2), the **relevant** metadata may be kept until the end of the period during which a bill may lawfully be challenged or a payment may be pursued in accordance with national law.

data, in accordance with Regulation (EU) 2016/679.

2. Without prejudice to point (b) of Article 6(1) and points (a), (c) **and** (ca) of Article 6(2), the provider of the electronic communications service shall erase electronic communications metadata or, make that data anonymous when it is no longer needed for the purpose of the transmission of a communication

3. Where the processing of electronic communications metadata takes place for the purpose of billing in accordance with point (b) of Article 6(2), **only** the metadata **that is strictly necessary for this purpose** may be kept until the end of the period during which a bill may lawfully be challenged or a payment may be pursued in accordance with national law.

Amendment 34

Proposal for a regulation Article 8

Text proposed by the Commission

Article 8

Protection of information stored in and related to end-users' terminal equipment

1. The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the end-user concerned shall be prohibited, except on the following grounds:

(a) it is necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or

(b) the end-user has given his or her consent; or

(b) the end-user has given his or her

Amendment

Article 8

Protection of information stored in **processed by** and related to end-users' terminal equipment

1. The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the end-user concerned shall be prohibited, except on the following grounds:

(a) it is necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or

(b) the end-user has given his or her consent; or

(b) the end-user has given his or her

consent; or

(c) it is necessary for providing an information society service requested by the end-user; or

(d) *if* it is necessary *for web audience measuring, provided that such measurement is carried out by the provider of the* information society service *requested by* the end-user.

The collection of information emitted by terminal equipment to enable it to connect to another device *and*, or to network equipment shall be prohibited, except if:

(a) it is done exclusively in order to, for the time necessary for, and for the purpose of establishing a connection; or

(b) *a clear and prominent notice is displayed informing of, at least, the modalities of the collection, its purpose, the person responsible for it and the other information required under Article 13 of Regulation (EU) 2016/679 where personal data are collected, as well as any measure the end-user of the terminal equipment can*

consent; or

(c) it is necessary for providing an information society service requested by the end-user *for the duration necessary for that provision of the service* ; or

(d) it is necessary *in order to obtain information about the quality or effectiveness of an* information society service *that has been delivered or about terminal equipment functionality, and it has no or little impact on the privacy of* the end-user *concerned*.

(d a) it is necessary to ensure security, confidentiality, integrity, availability and authenticity of the terminal equipment of the end-user, in particular by means of updates, or to detect technical faults or errors, for the duration necessary for that purpose, provided that:

i) this does not in any way change the functionality of the hardware or software or the privacy settings chosen by the user;

ii) the user is informed in advance each time an update is being installed; and

iii) the user has the possibility to postpone or turn off the automatic installation of any updates.

The collection of information emitted by terminal equipment to enable it to connect to another device or to network equipment shall be prohibited, except if:

(a) it is done exclusively in order to, for the time necessary for, and for the purpose of establishing a connection; or

(b) *the end-user has given his or her consent after being informed, by way of a notification to his or her terminal equipment, of the purpose of the collection of information including* the modalities of the collection, the person responsible for it and the other information required under Article 13 of Regulation (EU) 2016/679 where personal data are

take to stop or minimise the collection.

collected, as well as any measure the end-user of the terminal equipment can take to stop or minimise the collection; **or**

(b a) it is strictly necessary for the purpose of statistical counting, is limited in time and space to the extent strictly necessary for this purpose and the data is made anonymous or erased as soon as it is no longer needed for this purpose in such a way that it can no longer be linked to the terminal equipment or used to single out end-users on the basis of their terminal equipment, and is only further processed for statistical purposes that generate aggregate information.

The collection of such information shall be conditional on the application of appropriate technical and organisational measures to ensure a level of security appropriate to the risks, as set out in Article 32 of Regulation (EU) 2016/679, ***have been applied.***

The collection of such information shall be conditional on the application of appropriate technical and organisational measures to ensure a level of security appropriate to the risks, as set out in Article 32 of Regulation (EU) 2016/679.

3. The information to be provided pursuant to point (b) of paragraph 2 may be provided in combination with standardized icons in order to give a meaningful overview of the collection in an easily visible, intelligible and clearly legible manner.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 determining the information to be presented by the standardized icon and the procedures for providing standardized icons.

Amendment 35

Proposal for a regulation Article 9

Text proposed by the Commission

Article 9

Amendment

Article 9

Consent

1. The definition of and conditions for consent provided for under Articles 4(11) and 7 of Regulation (EU) **2016/679/EU** shall apply.

2. Without prejudice to paragraph 1, where technically possible and feasible, for the purposes of point (b) of Article 8(1), consent may be expressed by using the appropriate technical settings of a software application enabling access to the internet.

3. End-users who have consented to the processing of electronic communications data as set out in point (c) of Article 6(2) and points (a) and (b) of Article 6(3) shall be given the possibility to withdraw their consent at any time as set forth under Article 7(3) of Regulation (EU) 2016/679 **and be reminded of this possibility at periodic intervals of 6 months, as long as the processing continues.**

Amendment 36

Proposal for a regulation Article 10

Text proposed by the Commission

Article 10

Information and options for privacy settings to be provided

1. Software placed on the market

Consent

1. The definition of and conditions for **informed** consent provided for under Articles 4(11) and 7 of Regulation (EU) **2016/679** shall apply.

2. Without prejudice to paragraph 1, where technically possible and feasible, for the purposes of point (b) of Article 8(1), consent may be expressed by using the appropriate technical settings of a software application enabling access to the internet.

Where the user expresses consent by means of such technical settings, those settings shall be binding on, and enforceable against any other party. Where access to a service requires processing of information that is not strictly necessary for the provision of the service and an end-user has refused to give his or her consent to such processing, the end-user shall be given other fair and reasonable options to access the service.

3. End-users who have consented to the processing of electronic communications data as set out in point (c) of Article 6(2) and points (a), **(aa)** and (b) of Article 6(3) shall be given the possibility to withdraw their consent at any time as set forth under Article 7(3) of Regulation (EU) 2016/679. ***It shall be as easy to withdraw as to give consent.***

Amendment

Article 10

Information and options for privacy settings to be provided

1. Software placed on the market

permitting electronic communications, including the retrieval and presentation of information on the internet, shall offer the option to prevent *third* parties from *storing information on* the terminal equipment of an end-user or *processing* information *already stored on* that equipment.

2. *Upon installation*, the software shall inform the end-user about the privacy settings options *and, to continue with the* installation, *require* the end-user to consent *to a setting*.

3. In the case of software which has already been installed on 25 May 2018, the requirements under paragraphs 1 and 2 shall be complied with at the time of the first update of the software, but no later than *25 August 2018*.

permitting electronic communications, including the retrieval and presentation of information on the internet, shall offer the *appropriate technical settings referred to in Article 9(2)*. *Such settings shall provide by design the* option to prevent *other* parties from *making use of the processing and storage capabilities of* the terminal equipment of an end-user or *collecting* information *from*, that equipment *that is not necessary for the provision of the specific service requested by the end-user*.

The software referred to in the first subparagraph shall offer the option to opt out from cross-device tracking.

2. The software shall inform the end-user about the privacy settings options *upon* installation *and after any update to the software that affects the storing of information on the terminal equipment of the end-user or the processing of information already stored on that equipment*.

Privacy settings options shall be presented in such a way as to allow the end-user to *take a fully informed decision*.

Privacy settings options shall be easily accessible and modifiable during the use of the terminal equipment or software.

The European Data Protection Board shall issue guidelines on the fulfilment of the conditions of consent by appropriate technical settings by 25 November 2018.

3. In the case of software which has already been installed on 25 May 2018, the requirements under paragraphs 1 and 2 shall be complied with at the time of the first update of the software, but no later than *25 November 2019*.

Amendment 37

Proposal for a regulation Article 11

Article 11

Article 11

Restrictions

Restrictions

1. Union or Member State law may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 5 to 8 where such a restriction respects the essence of the fundamental rights and freedoms and is a necessary, appropriate and proportionate measure in a democratic society to safeguard one or more of the general public interests *referred to in Article 23(1)(a) to (e) of Regulation (EU) 2016/679 or a monitoring, inspection or regulatory function connected to the exercise of official authority for such interests.*

1. Union or Member State law may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 5 to 8 where such a restriction respects the essence of the fundamental rights and freedoms and is a necessary, appropriate and proportionate measure in a democratic society to safeguard one or more of the ***following*** general public interests:

(a) *national security;*

(b) *defence;*

(c) *the prevention, investigation, detection or prosecution of serious criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.*

In particular, any legislative measure restricting the scope of obligations and rights provided for in Article 5 shall contain specific provisions, where relevant, pursuant to Article 23(2) of Regulation (EU) 2016/679 and be implemented on the basis a court order.

In accordance with Article 17, no legislative measure referred to in paragraph 1 may allow for the weakening of the cryptographic methods used or the security and integrity of the terminal equipment, or the communication networks and services.

2. Providers of electronic communications services shall ***establish internal procedures for responding to*** requests for access to end-users' electronic

2. Providers of electronic communications services shall ***provide on demand, to the competent supervisory authority and to the public, information***

communications data based on a legislative measure adopted pursuant to paragraph 1. ***They shall provide the competent supervisory authority, on demand, with information about those procedures,*** the number of requests received, the legal justification invoked ***and their response.***

about requests for access to end-users electronic communications data based on a legislative measure adopted pursuant to paragraph 1 ***in particular*** the number of requests received, the ***number of requests granted, and the*** legal justification invoked.

Amendment 38

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

1. Regardless of whether the calling end-user has prevented the presentation of the calling line identification, where a call is made to emergency services, providers of publicly available number-based interpersonal communications services shall override the elimination of the presentation of the calling line identification ***and the denial or absence of consent of an end-user for the processing of metadata,*** on a per-line basis for organisations dealing with emergency communications, including public safety answering points, for the purpose of responding to such communications.

Amendment

1. Regardless of whether the calling end-user has prevented the presentation of the calling line identification, where a call is made to emergency services, providers of publicly available number-based interpersonal communications services shall override the elimination of the presentation of the calling line identification, on a per-line basis for organisations dealing with emergency communications, including public safety answering points, for the purpose of responding to such communications.

Justification

Deleted and moved to Art. 6., par. 2a (new)

Amendment 39

Proposal for a regulation Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. This Regulation shall be without prejudice to the requirements for the deployment of the eCall in-vehicle system based on the 112 service (Regulation 2015/758) and shall allow eCall to handle

emergency situations and carry out the tasks as effectively as possible;

Amendment 40

Proposal for a regulation

Article 14 – paragraph 1 – point a

Text proposed by the Commission

(a) to block incoming calls from specific numbers or from anonymous sources;

Amendment

(a) to block incoming calls from specific numbers or *numbers having a specific code or prefix identifying the fact that the call is a marketing call referred to in Article 16(3)(b), or* from anonymous sources;

Amendment 41

Proposal for a regulation

Article 15

Text proposed by the Commission

Article 15

Publicly available directories

1. The providers of *publicly available directories* shall obtain the consent of end-users who are natural persons to *include* their personal data *in the directory* and, consequently, shall *obtain consent from these* end-users *for* inclusion of data per category of personal data, to the extent that such data are *relevant* for the purpose *of the directory as determined by the provider* of the directory. Providers shall give end-users who are natural persons the means to verify, correct and delete such data.

2. The providers of a publicly available directory shall inform end-users who are natural persons whose personal data are in the directory of the available search functions of the directory and obtain end-users' consent before enabling such

Amendment

Article 15

Publicly available directories

1. The providers of *electronic communication services* shall obtain the consent of end-users who are natural persons to *share* their personal data *with the providers of publicly available directories* and, consequently, shall *provide* end-users *with information about* inclusion of data per category of personal data, to the extent that such data are *necessary* for the purpose of the directory. Providers shall give end-users who are natural persons the means to verify, correct and delete such data.

2. The providers of a publicly available directory shall inform end-users who are natural persons whose personal data are in the directory of the available search functions of the directory and obtain end-users' consent before enabling such

search functions related to their own data.

3. The providers of publicly available directories shall provide end-users that are legal persons with the possibility to object to data related to them being included in the directory. Providers shall give such end-users that are legal persons the means to verify, correct and delete such data.

4. The possibility for end-users not to be included in a publicly available directory, or to verify, correct and delete any data related to them shall be provided free of charge.

search functions related to their own data.

3. The ***providers of electronic communication services or*** providers of publicly available directories shall provide end-users that are legal persons ***or natural persons acting in a business capacity*** with the possibility to object to data related to them being included in the directory. Providers shall give such end-users that are legal persons ***or natural persons acting in a business capacity*** the means to verify, correct and delete such data.

4. The possibility for end-users not to be included in a publicly available directory, or to verify, correct and delete any data related to them shall be provided free of charge ***and in an easily accessible manner by the provider of electronic communication services or directly from the provider of publicly available directory.***

4 a. Where the personal data of end-users who are natural persons have been included in a publicly available directory before this Regulation enters into force, and where acquiring consent would lay an unreasonable burden on the directory or originating service provider, the personal data of such end-users may remain included in a publicly available directory, including versions with search functions, unless the end-users have expressed their manifest objection against their data being included in the directory or against available search functions related to their data.

Amendment 42

Proposal for a regulation Article 16

Text proposed by the Commission

Article 16

Unsolicited communications

Amendment

Article 16

Unsolicited communications

1. Natural or legal persons may use electronic communications services for the purposes of sending direct marketing communications to end-users who are natural persons *that* have given their consent.
2. Where a natural or legal person obtains electronic contact details for electronic mail from its customer, in the context of the sale of a product or a service, in accordance with Regulation (EU) 2016/679, that natural or legal person may use these electronic contact details for direct marketing of its own *similar* products or services only if customers are clearly and distinctly given the opportunity to object, free of charge and in an easy manner, to such use. The right to object shall be given at the time of collection and each time a message is sent.
3. Without prejudice to paragraphs 1 and 2, natural or legal persons using electronic communications services for the purposes of placing direct marketing calls shall:
 - (a) present the identity of a line on which they can be contacted; or
 - (b) present a specific code/or prefix identifying the fact that the call is a marketing call.
4. Notwithstanding paragraph 1, Member States may provide by law that the placing of direct marketing voice-to-voice calls to end-users who are natural persons shall only be allowed in respect of end-users who are natural persons who have not expressed their objection to receiving those communications.
5. Member States shall ensure, in the framework of Union law and applicable

1. Natural or legal persons may use electronic communications services for the purposes of sending direct marketing communications to end-users who are natural persons *and* have given their consent.
2. Where a natural or legal person obtains electronic contact details for electronic mail from its customer, in the context of the sale of a product or a service, in accordance with Regulation (EU) 2016/679, that natural or legal person may use these electronic contact details for direct marketing of its own products or services only if customers are clearly and distinctly given the opportunity to object, free of charge and in an easy manner, to such use. The *customer shall be informed of the* right to object *and* shall be given *an easy way to exercise it* at the time of collection and each time a message is sent.
3. Without prejudice to paragraphs 1 and 2, natural or legal persons using electronic communications services for the purposes of placing direct marketing calls shall:
 - (a) present the identity of a line on which they can be contacted; or
 - (b) present a specific code/or prefix identifying the fact that the call is a marketing call.
4. Notwithstanding paragraph 1, Member States may provide by law that the placing of direct marketing voice-to-voice calls to end-users who are natural persons shall only be allowed in respect of end-users who are natural persons who have not expressed their objection to receiving those communications. *Member States shall provide that users can object to receiving the unsolicited communications via a national Do Not Call Register, thereby also ensuring that the user is only required to opt out once.*
5. Member States shall ensure, in the framework of Union law and applicable

national law, that the legitimate interest of end-users that are legal persons with regard to unsolicited communications sent by means set forth under paragraph 1 are sufficiently protected.

6. Any natural or legal person using electronic communications services to transmit direct marketing communications shall inform end-users of the marketing nature of the communication and the identity of the legal or natural person on behalf of whom the communication is transmitted and shall provide the necessary information for recipients to exercise their right to withdraw their consent, *in an easy manner*, to receiving further marketing communications.

7. The Commission shall be empowered to adopt implementing measures in accordance with Article 26(2) specifying the code/or prefix to identify marketing calls, pursuant to point (b) of paragraph 3.

Amendment 43

Proposal for a regulation Article 17

Text proposed by the Commission

Article 17

Information about detected security risks

In the case of a particular risk that may compromise the security of networks and electronic communications services, the provider of an electronic communications service shall inform end-users concerning such risk and, where the risk lies outside the scope of the measures to be taken by

national law, that the legitimate interest of end-users that are legal persons with regard to unsolicited communications sent by means set forth under paragraph 1 are sufficiently protected.

6. Any natural or legal person using electronic communications services to transmit direct marketing communications shall inform end-users of the marketing nature of the communication and the identity of the legal or natural person on behalf of whom the communication is transmitted and shall provide the necessary information for recipients to exercise their right to withdraw their consent ***or to object free of charge, as provided for in Article 12(5) of Regulation (EU) No 2016/679***, to receiving further marketing communications. ***Any use of masked sender identities, false contact information or false return addresses or numbers for direct marketing purposes shall be prohibited.***

7. The Commission shall be empowered to adopt implementing measures in accordance with Article 26(2) specifying the code/or prefix to identify marketing calls, pursuant to point (b) of paragraph 3.

Amendment

Article 17

Security obligations

Providers of electronic communication services shall comply with the security obligations as set out in Regulation (EU) 2016/679 and [Directive of the European Parliament and of the Council establishing the European Electronic Communications Code]. Providers of electronic

the service provider, inform end-users of any possible remedies, including an indication of the likely costs involved.

communications services *shall ensure that there is sufficient protection in place against unauthorised access or alterations to the electronic communications data and that the confidentiality and integrity of the communication are guaranteed by state of the art technical measures, including cryptographic methods such as end-to-end encryption.*

In order to provide information to end-users about security standards, self-certification or labelling schemes specifying the security and quality characteristics of software and terminal equipment shall be promoted.

Amendment 44

Proposal for a regulation Article 19 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) draw up guidelines for supervisory authorities concerning the application of Article 9(1) and the particularities of expression of consent by legal entities;

Amendment 45

Proposal for a regulation Article 21 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. An end-user or a group of end-users shall have the right to mandate a non-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest, and is active in the field of protection of their personal data and the protection of privacy to lodge the complaint on his or her behalf, to exercise the rights referred

to in paragraphs 1 and 2 of this Article on his or her behalf, and to exercise the right to receive compensation referred to in Article 22 on his or her behalf where provided for by Member State law.

Amendment 46

Proposal for a regulation Article 21 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. A body, organisation or association independently of the end-user's mandate, shall have the right to lodge, in the Member State where it is registered, a complaint with the supervisory authority which is competent pursuant to paragraph 1 of this Article and to exercise the rights referred to in paragraph 2 of this Article if it considers that the rights of the end-user under this Regulation have been infringed.

Amendment 47

Proposal for a regulation Chapter VI – title

Text proposed by the Commission

Amendment

**DELEGATED ACTS AND
IMPLEMENTING ACTS**

IMPLEMENTING ACTS

Amendment 48

Proposal for a regulation Article 25

Text proposed by the Commission

Amendment

Article 25

deleted

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 8(4) shall be conferred on the Commission for an indeterminate period of time from [the date of entering into force of this Regulation].

3. The delegation of power referred to in Article 8(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 8(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Amendment 49

Proposal for a regulation

Article 27

Text proposed by the Commission

Article 27

Repeal

1. Directive 2002/58/EC is repealed with effect from 25 **May** 2018.
2. References to the repealed Directive shall be construed as references to this Regulation.

Amendment

Article 27

Repeal

1. Directive 2002/58/EC is repealed with effect from 25 **November** 2018.
2. References to the repealed Directive shall be construed as references to this Regulation.

Amendment 50

Proposal for a regulation

Article 28

Text proposed by the Commission

Article 28

Monitoring and evaluation clause

By 1 **January** 2018 at the latest, the Commission shall establish a detailed programme for monitoring the effectiveness of this Regulation.

No later than three years after the date of application of this Regulation, and every three years thereafter, the Commission shall carry out an evaluation of this Regulation and present the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall, where appropriate, inform a proposal for the amendment or repeal of this Regulation in light of legal, technical or economic developments.

Amendment

Article 28

Monitoring and evaluation clause

By 1 **June** 2018 at the latest, the Commission shall establish a detailed programme for monitoring the effectiveness of this Regulation.

No later than three years after the date of application of this Regulation, and every three years thereafter, the Commission shall carry out an evaluation of this Regulation and present the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall, where appropriate, inform a proposal for the amendment or repeal of this Regulation in light of legal, technical or economic developments.

Amendment 51

Proposal for a regulation

Article 29

Text proposed by the Commission

Article 29

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from 25 *May* 2018.

Amendment

Article 29

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from 25 *November* 2018.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)
References	COM(2017)0010 – C8-0009/2017 – 2017/0003(COD)
Committee responsible Date announced in plenary	LIBE 16.2.2017
Opinion by Date announced in plenary	ITRE 16.2.2017
Rapporteur Date appointed	Kaja Kallas 16.3.2017
Discussed in committee	21.6.2017
Date adopted	2.10.2017
Result of final vote	+: 50 –: 5 0: 7
Members present for the final vote	Nikolay Barekov, Nicolas Bay, Bendt Bendtsen, Xabier Benito Ziluaga, José Blanco López, David Borrelli, Jonathan Bullock, Cristian-Silviu Buşoi, Edward Czesak, Jakop Dalunde, Pilar del Castillo Vera, Fredrick Federley, Adam Gierek, Theresa Griffin, Rebecca Harms, Hans-Olaf Henkel, Kaja Kallas, Barbara Kappel, Krišjānis Kariņš, Seán Kelly, Jaromír Kohlíček, Peter Kouroumbashev, Zdzisław Krasnodębski, Miapetra Kumpula-Natri, Christelle Lechevalier, Janusz Lewandowski, Paloma López Bermejo, Edouard Martin, Angelika Mlinar, Csaba Molnár, Nadine Morano, Dan Nica, Aldo Patriciello, Miroslav Poche, Michel Reimon, Massimiliano Salini, Algirdas Saudargas, Sven Schulze, Neoklis Sylikiotis, Dario Tamburrano, Patrizia Toia, Evžen Tošenovský, Claude Turmes, Vladimir Urutchev, Kathleen Van Brempt, Henna Virkkunen, Martina Werner, Lieve Wierinck, Anna Záborská, Carlos Zorrinho
Substitutes present for the final vote	Pilar Ayuso, Pervenche Berès, Michał Boni, Rosa D'Amato, Jens Geier, Françoise Grossetête, Werner Langen, Olle Ludvigsson, Răzvan Popa, Dennis Radtke, Dominique Riquet
Substitutes under Rule 200(2) present for the final vote	Claudia Schmidt

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

50	+
ALDE	Fredrick Federley, Kaja Kallas, Angelika Mlinar, Dominique Riquet, Lieve Wierinck
ECR	Nikolay Barekov, Edward Czesak, Hans-Olaf Henkel, Zdzisław Krasnodębski, Evžen Tošenovský
ENF	Nicolas Bay, Barbara Kappel, Christelle Lechevalier
PPE	Pilar Ayuso, Bendt Bendtsen, Michał Boni, Cristian-Silviu Bușoi, Françoise Grossetête, Krišjānis Kariņš, Seán Kelly, Werner Langen, Janusz Lewandowski, Nadine Morano, Aldo Patriciello, Dennis Radtke, Massimiliano Salini, Algirdas Saudargas, Claudia Schmidt, Sven Schulze, Vladimir Urutchev, Henna Virkkunen, Anna Záborská, Pilar del Castillo Vera
S&D	Pervenche Berès, José Blanco López, Jens Geier, Adam Gierek, Theresa Griffin, Peter Kouroumbashev, Miapetra Kumpula-Natri, Olle Ludvigsson, Edouard Martin, Csaba Molnár, Dan Nica, Miroslav Poche, Răzvan Popa, Patrizia Toia, Kathleen Van Brempt, Martina Werner, Carlos Zorrinho

5	-
EFDD	Jonathan Bullock
GUE	Xabier Benito Ziluaga, Jaromír Kohlíček, Paloma López Bermejo, Neoklis Sylikiotis

7	0
EFDD	David Borrelli, Rosa D'Amato, Dario Tamburrano
Verts/ALE	Jakop Dalunde, Rebecca Harms, Michel Reimon, Claude Turmes

Key to symbols:

+ : in favour

- : against

0 : abstention