

Scope

- electronic communications content + metadata
- end-users' terminal equipment information

History

- Why ePrivacy on top of GDPR?
 - Confidentiality of communications
 - Right to be left alone
 - Restrictions on bulk electronic communications (spam)
 - End-user control over their equipment (cookies)
 - More specific rules about online tracking/statistics

Commission published a proposal in 2017, the European Parliament came to a negotiation mandate for the rapporteur in October 2017. The Council of Ministers still has not managed to reach a common position on the Commission's proposal.

So the current status is that the triilogue still has to begin.

Current Status - Concerns regarding [latest Council \(COU\) Presidency paper](#):

- Article 2 (scope): COU wants exception for "activities concerning security and defence" - **leaves the door open for mandatory data retention**
- COU wants stored communications out of scope
- Article 3 (territorial scope): COU wants to limit to users who are in the Union
- ePrivacy - Article 6: Backdoor for **Commercial Data Retention**
 - consent without protection
 - content: blurry grounds such as "network security", "detect technical faults", COU: "security risks", "attacks", "detect or prevent security risks and/or attacks on end-users' terminal equipment", any "legal obligation" according to national law to "safeguard public security" (which is the backdoor to data retention)
 - metadata COU: "network management", "network optimisation", "quality of service", "detecting or stopping fraudulent, or abusive use of, or subscription to, electronic communications services", "to protect the vital interest of a natural person, in the case of emergency, in general upon request of a competent public authority", "statistical/research purposes"
 - lack of safeguards
 - no limitation to specific cases
 - applies even to content!
 - "processing" includes data transfer to third parties!
 - no purpose limitation
 - no maximum time limits ("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")
 - COU: transfer to third parties
- Article 6d COU: **communications filters/censorship** - providers start snooping into your private communications ("providers of number-independent interpersonal communications services shall be permitted to process electronic communication data

for the sole purpose of preventing child sexual abuse and exploitation by detecting, deleting and reporting material”)

- Article 7 (4) COU (**mandatory data retention**): “Union or Member state law may provide in accordance with Article 11 that the electronic communications metadata is retained, in order to safeguard public security, for a limited period that is longer than the period set out in this Article”
- Article 8 (**Cookies/Browsers**) identification, location: consent, to provide a requested service, for audience measuring by third parties, “security of information society services or terminal equipment of the end-user, prevent fraud or detect technical faults”
- Also Recital 21 exempting machine-to-machine communications over non-public networks from cookie rules, likewise for IoT device such as smart meters.
- Article 10: COU wants to delete “do not track” requirement for browser manufacturers
- Article 11 (restrictions): MS may break confidentiality for enforcing civil claims
- Article 16 COU: “Member States may provide by law a set period of time, after the sale of the product or service occurred, that within which a natural or legal person may use its customer's contact details of the end-user who is a natural person for direct marketing purposes”
- Art. 17: COU doesn't want users to be informed about security risks
- COU wants tracking walls
- COU doesn't want encryption requirement

View into the future

COREPER taking place on 22nd November

Discussion: Is a trilogue promising our harmful?

- good rapporteur
- EP position in some points weak
- COU position disastrous
- lobbying

08/11/2019 COU Position:

https://www.parlament.gv.at/PAKT/EU/XXVII/EU/00/21/EU_02143/imfname_10938027.pdf

22/11/2019 1st COREPER