



**2017/0003(COD)**

29.9.2017

## **OPINION**

of the Committee on the Internal Market and Consumer Protection

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: Eva Maydell

PA\_Legam

## SHORT JUSTIFICATION

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 is one of the main pillars of the Digital Single Market (DSM) Strategy, and so is to guarantee the free movement of electronic communications data, equipment and services in the Union in order to provide a level playing field for all market players.

The current Commission's proposal aims to achieve these goals, by reviewing the e-Privacy Directive. Ahead of the coming into effect of the General Data Protection Regulation 2016/679 (GDPR) it is important to ensure consistency between the different legal instruments addressing personal data in the digital environment, with the objective to increase trust in and the security of digital services in the DSM.

Your rapporteur welcomes the proposal as an important part of the DSM Strategy, but believes that in order to achieve its main objectives different changes are needed.

First of all your rapporteur believes that the proposal should only clarify the provisions of GDPR and fill the regulatory gaps where they exist, but should not go beyond the requirements of the GDPR creating additional barriers and burdens.

The proposal should therefore facilitate and help commercial and social activities online, the legislative framework in this field should allow and provide a proper business environment for the creation of new products and services thus increasing the competition and giving the access to more choice and services for consumers.

Overregulation and complex procedures that impede the evolution of the DSM and the satisfaction of end-users' demands, would be highly counterproductive and burdensome for European consumers and businesses. Therefore, consumer-friendly digital environment should be at the core of this proposal in order to provide for informed choice of privacy settings.

To achieve this goal several amendments of the rapporteur are addressing, inter alia, the broad reference to machine-to-machine communications and the unclear extent of the exemption of corporate networks. In addition, the rapporteur believes that amendments are necessary to provide for more flexibility for the permitted processing of information based on consent.

In Article 3, on the territorial scope and representative, an amendment is introduced to avoid duplication of regulation. The GDPR imposes a requirement on providers of electronic communications services not established within the Union to designate a representative.

In Article 4, on definitions, the rapporteur believes that this regulation must be aligned with the proposed Directive on establishing the European Electronic Communications Code, in order to insure a consistent treatment of 'ancillary services' across the legal instruments of the DSM Strategy.

In Article 5, on the confidentiality of electronic communications data, the rapporteur believes that processing of data has been extensively covered by Article 6 in the current proposal for regulation and also in the GDPR.

In Article 6, regarding the permitted processing of electronic communications data, metadata and content, your rapporteur believes that a simplification of the text is necessary. The rapporteur considers that processing of previously collected data for compatible purposes, such as the development of services that ultimately provide added value for the end-users and

their user-experience, public authorities and businesses should be allowed.

The rapporteur proposes the deletion of Article 7 because the storage and later use of communications data of natural persons are covered under the GDPR. As proposed, Article 7 would require immediate deletion of communications data after transmission with only a few limited exceptions. With the advent of digital communications using audio, text and video components, service providers often need to store message content for later use, such as allowing the user to access old communication and messages. Such practices will already be subject to the GDPR's limitations on the storage and later use of end users' personal data.

In Article 10, the rapporteur opposes mandatory choice making, but believes in an open scheme that allows and simplifies the end-users' experience. Freedom of choice should always be guaranteed but it should not be made compulsory. In Article 11, on Restrictions, some amendments are tabled to clarify the responsibilities and obligations of the providers.

In Article 15, the rapporteur believes that the providers of electronic services are in best position to obtain the consent of the end-user regarding the inclusion of their data in public directories. In Article 16, the rapporteur believes that the proposed two measures serve different purpose. While it is essential to present the identity of the contact line, an obligation of a prefix may be disproportionate additional costs for the natural and legal persons, especially micro enterprises and start-ups.

Finally, in Article 17, the rapporteur believes that it is of end-users' best interest to be made aware of possible serious risks of security breach, especially with the increase of global cyber-security threats.

## AMENDMENTS

The Committee on the Internal Market and Consumer Protection 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 2

*Text proposed by the Commission*

(2) The content of electronic communications may reveal highly sensitive information about the natural persons involved in the communication, ***from personal experiences and emotions to medical conditions, sexual preferences and political views, the disclosure of which could result in personal and social harm, economic loss or embarrassment.*** Similarly, metadata derived from electronic

*Amendment*

(2) The content of electronic communications may reveal highly sensitive information about the natural persons involved in the communication. Similarly, metadata derived from electronic communications may also reveal very sensitive and personal information. These metadata includes the numbers called, the websites visited, geographical location, the time, date and duration when an individual

communications may also reveal very sensitive and personal information. These metadata includes the numbers called, the websites visited, geographical location, the time, date and duration when an individual made a call etc., allowing *precise* conclusions to be drawn regarding the private lives of the persons involved in the electronic communication, *such as their social relationships, their habits and activities of everyday life, their interests, tastes etc.*

## Amendment 2

### Proposal for a regulation Recital 6

#### *Text proposed by the Commission*

(6) While the principles and main provisions of Directive 2002/58/EC of the European Parliament and of the Council<sup>5</sup> remain generally sound, that Directive has not fully kept pace with the evolution of technological and market reality, resulting in an inconsistent *or insufficient effective* protection of privacy and confidentiality in relation to electronic communications. Those developments include the entrance on the market of electronic communications services that from a consumer perspective are substitutable to traditional services, but do not have to comply with the same set of rules. Another development concerns new techniques that allow for tracking of online behaviour of end-users, which are not covered by Directive 2002/58/EC. Directive 2002/58/EC should therefore be repealed and replaced by this Regulation.

---

<sup>5</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector

made a call etc., allowing conclusions to be drawn regarding the private lives of the persons involved in the electronic communication. *The protection of confidentiality of communications is an essential condition for the respect of other connected fundamental rights and freedoms, such as the protection of freedom of thought, conscience and religion, freedom of assembly, freedom of expression and information.*

#### *Amendment*

(6) While the principles and main provisions of Directive 2002/58/EC of the European Parliament and of the Council<sup>5</sup> remain generally sound, that Directive has not fully kept pace with the evolution of technological and market reality, resulting in an *insufficient clarity and enforcement of the* protection of privacy and confidentiality in relation to electronic communications. Those developments include the entrance on the market of electronic communications services that from a consumer perspective are substitutable to traditional services, but do not have to comply with the same set of rules. Another development concerns new techniques that allow for tracking of online behaviour of end-users, which are not covered by Directive 2002/58/EC. Directive 2002/58/EC should therefore be repealed and replaced by this Regulation.

---

<sup>5</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector

(Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p.37).

(Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p.37).

### Amendment 3

#### Proposal for a regulation Recital 8

##### *Text proposed by the Commission*

(8) This Regulation should apply to providers of electronic communications services, to providers of publicly available directories, and to software providers permitting electronic communications, including the retrieval and presentation of information on the internet. This Regulation should also apply to natural and legal persons who use electronic communications services to send direct marketing **commercial** communications or collect information related to or stored in end-users' terminal equipment.

##### *Amendment*

(8) This Regulation should apply to providers of electronic communications services, to providers of publicly available directories, and to software providers permitting electronic communications, including the retrieval and presentation of information on the internet. This Regulation should also apply to natural and legal persons who use electronic communications services to send direct marketing communications or collect information related to or stored in end-users' terminal equipment.

### Amendment 4

#### Proposal for a regulation Recital 11

##### *Text proposed by the Commission*

(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

##### *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. **This Regulation aims at ensuring** an effective and equal protection of end-users when using functionally equivalent services, **so as to ensure the confidentiality of their communication,**

[Directive of the European Parliament and of the Council establishing the European Electronic Communications Code<sup>24</sup> ]. 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.

---

<sup>24</sup> 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)).

*irrespective of the technological medium chosen. This* Regulation uses the definition of electronic communications services set forth in the [Directive of the European Parliament and of the Council establishing the European Electronic Communications Code<sup>24</sup> ]. 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.

---

<sup>24</sup> 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 5**

### **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

##### *Amendment*

(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 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.***

promote a trusted and secure Internet of Things in the digital single market, it is necessary to clarify that this Regulation should apply to the transmission of machine-to-machine communications.

***Nevertheless, in the context of automated supply-chains and elsewhere in the manufacturing or industrial context, where communication by the machines involved is not inter-personal and does not involve natural persons, this Regulation should not apply.***

## Amendment 6

### Proposal for a regulation Recital 13

#### *Text proposed by the Commission*

(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 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.***

#### *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 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. ***Therefore, this Regulation should apply to electronic communications data using electronic communications services which are targeting the general public, and public communications networks. In addition, this Regulation should also apply to closed social media profiles and groups that the user has restricted or defined as private. This Regulation should not apply to other kind of closed groups such as corporate networks, access to which is limited to members of the corporation. Such networks are offered to a defined group of end-users. However, even if undefined end-users use the***



*network in question in the context of the activities of the defined group of end-users it should not preclude them from being considered outside the material scope of the Regulation. For example, an enterprise's collaboration platform primarily used by its employees that allows third parties to call-in or otherwise engage in the workspace should not be covered. 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 16

*Text proposed by the Commission*

(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.

*Amendment*

(16) The prohibition of storage of communications *during transmission* 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. *This Regulation also* 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 *related to the respective service* or the processing of metadata *of the respective service* to ensure the necessary quality of service requirements, such as latency, jitter etc.

## Amendment 8

### Proposal for a regulation

#### Recital 16 a (new)

***(16a) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1a</sup> explicitly recognises the need to provide additional protection to children, given that they may be less aware of the risks and consequences associated with the processing of their personal data. This Regulation should also grant special attention to the protection of children's privacy. They are among the most active internet users and their exposure to profiling and behaviourally targeted advertising techniques should be prohibited.***

---

***<sup>1a</sup> 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 9**

### **Proposal for a regulation**

#### **Recital 17**

*Text proposed by the Commission*

(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

*Amendment*

(17) The processing of electronic communications ***metadata*** 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 ***further*** process electronic communications metadata. 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

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 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 heatmaps; 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.***

than conveying the communication. Therefore, this Regulation should require providers of electronic communications services to ***comply with Regulation (EU) 2016/679 when processing*** electronic communications metadata, which should include data on the location of the device. ***The processing of*** electronic communications metadata ***for purposes other than those for which the personal data were initially collected should be allowed in cases where consent was obtained for the initial collection and the further processing is compatible in accordance with Article 6(4) of Regulation (EU) 2016/679.*** Examples of commercial usages of electronic communications metadata by providers of electronic communications services may include the provision of heatmaps; 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.

## Amendment 10

### 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***

#### *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 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, household or business activities, the consent of the end-user requesting the service should be sufficient. Where an electronic communication service that is based on new technologies is likely to result in a high risk to the rights and freedoms of natural persons after taking into account the nature, scope, context and purposes of the service 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 obligation 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. After electronic communications content has been sent by the sender and received by the intended recipient(s), it may be recorded or stored***

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

by the *sender, the recipient(s)* or by *another* party entrusted by them to record or store such data. *For communications, which do not happen in real time, such as email and messaging, the transmission is completed as soon as the communication is delivered to the trusted service provider or collected by the addressee.* Any processing of such data must comply with Regulation (EU) 2016/679. *It should be possible to process electronic communications data for the purposes of providing services requested by a user for personal or work-related purposes such as search or keyword indexing functionality, text-to-speech engines and translation services, including picture-to-voice or other automated content processing used as accessibility tools for instance by persons with disabilities. This should be possible without the consent of all users who are part of the communication, but may take place with the consent of the user requesting the service. Such specific consent also precludes the provider from processing those data for different purposes.*

## Amendment 11

### Proposal for a regulation

#### Recital 21

##### *Text proposed by the Commission*

(21) Exceptions to the obligation to obtain consent to make use of the processing and storage capabilities of terminal equipment or to access information stored in terminal equipment should be limited to situations that involve no, or only very limited, intrusion of privacy. For instance, ***consent should not be requested for authorizing*** the technical storage or access which is strictly necessary and proportionate for the legitimate purpose of enabling the use of a ***specific*** service ***explicitly*** requested by the

##### *Amendment*

(21) Exceptions to the obligation to obtain consent to make use of the processing and storage capabilities of terminal equipment or to access information stored in, ***or processed by,*** terminal equipment should be limited to situations that involve no, or only very limited, intrusion of privacy. For instance, the technical storage or access which is strictly necessary and proportionate for the legitimate purpose of enabling the use of a service requested by the end-user. This may include the storing of ***information***

end-user. This may include the storing of cookies for the duration of a single established session on a website to keep track of the **end-user's** input when filling in online forms over several pages. Cookies can also be a legitimate and useful tool, for example, in measuring web traffic to a website. Information society providers that engage in configuration checking to provide the service in compliance with the end-user's settings and the mere logging of the fact that the **end-user's** device is unable to receive content requested by the end-user should not constitute access **to such a device or use of the device** processing capabilities.

**(such as cookies and identifiers)** for the duration of a single established session on a website to keep track of the **end-user's** input when filling in online forms over several pages. **This may also cover situations where end-users use a service across devices for the purpose of service personalisation and content recommendation.** Cookies, **if implemented with appropriate privacy safeguards**, can also be a legitimate and useful tool, for example, in measuring web traffic to a website. **Such measuring could also be carried out by another party which acts as a data processor in the meaning of Regulation (EU) 2016/679 for the provider of the service. Similarly, providers of terminal equipment and the software needed to operate such equipment regularly need access to configuration and other device information and the processing and storage capabilities to maintain the equipment or its use, and correct problems related to the equipment's operation. Therefore, consent should also not be necessary if the information processed or stored is necessary to protect privacy, security or safety of the end-user, or to protect confidentiality, integrity, availability and authenticity of the terminal equipment.** Information society providers and electronic communications service providers that engage in configuration checking to provide the service in compliance with the end-user's settings and the mere logging of the fact that the user's device is unable to receive content requested by the end-user should not constitute **illegitimate** access.

## Amendment 12

### Proposal for a regulation Recital 22

(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 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**.

(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 **or to object** by appropriate **technical** settings. 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, **unauthorised** parties, **provided that there is no separate specific consent given by the end-user**. Web browsers are a type of software application that 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. **On the other hand, in light of the pace of innovation, the increasing use and range of devices that permit communications and the increase of cross-device tracking, it is necessary for this Regulation to remain technology neutral to meet its objectives**. More particularly web browsers, **applications or mobile operating systems should not abuse their position as gate-keepers and still allow for**

*possibilities for the user to individually give consent with regard to a certain specific service or service provider. Such consent should prevail over the privacy settings chosen at an earlier date or at the point of installation of the software.*

## 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 ***a*** 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. Therefore providers of software enabling the retrieval and presentation of information on the internet should have an obligation to ***inform the end-user about the possibility to express or withdraw his or her consent using appropriate technical settings. The end-user should be offered multiple options to choose from, including to prevent the storage of information on the terminal equipment. End-users should be offered a set of privacy setting options, ranging from, for example, rejecting cookies or trackers that are not necessary for the functionality of the website or other software to, for example, accepting tracking necessary for the functionality of the website or other software as well as for other purposes or, for example, accepting tracking necessary for the functionality of the website or other software and tracking for other purposes by parties that demonstrate the compliance with Article 40 and 42 of Regulation (EU) 2016/679, and the possibility to opt out from cross-device tracking. These options may also be more fine-grained and, among other aspects, reflect the possibility that another party might act as a data processor in the meaning of Regulation (EU) 2016/679 for the provider of the service. In cases where***



*a business model is based on targeted advertising, consent should not be considered as freely given if the access to the service is made conditional on data processing. The end-user should therefore be able to choose between accepting cookies or being provided fair and reasonable options to access the service, such as subscription, payment or limited access to parts of the service or other options. Where the end-user accepts cookies for 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. Such privacy settings should be presented in an easily visible and intelligible manner. Information provided may include examples of benefits and risks associated with allowing cookies to be stored in the computer. Such obligations do not arise where the software already seeks to prevent the storage of information on the terminal equipment of an end-user or the processing of information already stored on that equipment.*

## **Amendment 14**

### **Proposal for a regulation Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

*(23a) Children merit specific protection with regard to their online privacy. They usually start using the internet at an early age and become very active users. Yet, they may be less aware of the risks and consequences associated to their online activities, as well as less aware of their rights. Specific safeguards are necessary in relation to the use of children's data, notably for the purposes of marketing and the creation of personality or user*

*profiles.*

## Amendment 15

### Proposal for a regulation Recital 24

*Text proposed by the Commission*

*Amendment*

*(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*

*deleted*

*allowed.*

## 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 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

*Amendment*

(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 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 ***ask for the end-user's consent, or where consent is not possible, such practices should be limited to what is strictly necessary for the purpose of statistical counting, be limited in time and***

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.

***space, or should carry out data protection impact assessment and in this case the data collected is or is rendered pseudonymous or anonymous or erased as soon as it is no longer needed for this purpose. Where a data protection impact assessment indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk, prior consultation with the supervisory authority, as prescribed in Article 36 of Regulation (EU) 2016/679, should be carried out. Providers should display or make available 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.***

## 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 prevention, investigation, detection or prosecution of criminal offences or the

#### *Amendment*

(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 ***is targeted at persons suspected of having committed a criminal offence and*** constitutes a necessary and proportionate measure in a democratic society to safeguard specific public interests, including national security, defence, public security and 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).

prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. 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 27 of ***Regulation (EU) 2016/679. Providers of electronic communications services should not be obliged by Union or Member States competent authorities to weaken any measures that ensure the integrity and confidentiality of electronic communications.***

## **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 in a professional capacity*** requires that end-users that are natural persons ***provided with transparent information about the data being*** included in ***the*** directory ***and the means to verify, correct, update, supplement and delete data relating to them free of charge, as well as the possibility of objecting to their data being included in public directories.*** 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 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

#### *Amendment*

(31) If end-users that are natural persons ***do not object to the inclusion of*** their data

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 21

### Proposal for a regulation Recital 33

#### *Text proposed by the Commission*

(33) Safeguards should be provided to protect end-users against unsolicited communications for direct marketing purposes, which intrude into the private life of end-users. The degree of privacy intrusion and nuisance is considered relatively similar independently of the wide range of technologies and channels used to conduct these electronic communications, whether using automated calling and communication systems, instant messaging applications, emails, SMS, MMS, Bluetooth, etc. It is therefore justified to require that consent of the end-user is obtained before commercial electronic communications for direct marketing purposes are sent to end-users in order to effectively protect individuals against the intrusion into their private life as well as the legitimate interest of legal persons. Legal certainty and the need to ensure that

being included in such directories, they should be able to ***make an objection on which categories directories, and they should be able to*** determine 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 ***or the providers of electronic communications services*** should inform the end-users of the purposes of the directory and of the search functions of the directory.

#### *Amendment*

(33) Safeguards should be provided to protect end-users against unsolicited communications, ***including*** for direct marketing purposes, which intrude into the private life of end-users. The degree of privacy intrusion and nuisance is considered relatively similar independently of the wide range of technologies and channels used to conduct these electronic communications, whether using automated calling and communication systems, instant messaging applications, emails, SMS, MMS, Bluetooth, etc. It is therefore justified to require that consent of the end-user is obtained before commercial electronic communications for direct marketing purposes are sent to end-users in order to effectively protect individuals against the intrusion into their private life as well as the legitimate interest of legal persons. Legal certainty and the need to

the rules protecting against unsolicited electronic communications remain future-proof justify the need to define a single set of rules that do not vary according to the technology used to convey these unsolicited communications, while at the same time guaranteeing an equivalent level of protection for all citizens throughout the Union. However, it is reasonable to allow the use of e-mail contact details within the context of an existing customer relationship for the offering of *similar* products or services. Such possibility should only apply to the same company that has obtained the electronic contact details in accordance with Regulation (EU) 2016/679.

ensure that the rules protecting against unsolicited electronic communications remain future-proof justify the need to define a single set of rules that do not vary according to the technology used to convey these unsolicited communications, while at the same time guaranteeing an equivalent level of protection for all citizens throughout the Union. However, it is reasonable to allow the use of e-mail contact details within the context of an existing customer relationship for the offering of products or services. Such possibility should only apply to the same company that has obtained the electronic contact details in accordance with Regulation (EU) 2016/679.

## Amendment 22

### 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 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.

#### *Amendment*

(37) Service providers who offer electronic communications services should **process electronic communications data in such a way as to prevent unauthorised processing, including access, disclosure or alteration. They should ensure that such unauthorised access, disclosure or alteration is possible of being ascertained, and also ensure that electronic communications data are protected by using state of the art software and encryption technologies. Service providers should also inform end-users** of measures they can take to protect **their anonymity and** the security of their communications, for instance by using specific types of software or encryption technologies. The requirement to inform 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.

## Amendment 23

### Proposal for a regulation

#### Recital 39

##### *Text proposed by the Commission*

(39) Each supervisory authority should be competent on the territory of its own Member State to exercise the powers and to perform the tasks set forth in this Regulation. In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the supervisory authorities should have the same tasks and effective powers in each Member State, without prejudice to the powers of prosecutorial authorities under Member State law, to bring infringements of this Regulation to the attention of the judicial authorities and engage in legal proceedings. Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation.

##### *Amendment*

(39) Each supervisory authority should be competent on the territory of its own Member State to exercise the powers and to perform the tasks set forth in this Regulation. In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the supervisory authorities should have the same tasks and effective powers in each Member State, without prejudice to the powers of prosecutorial authorities under Member State law, to bring infringements of this Regulation to the attention of the judicial authorities and engage in legal proceedings. Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. ***Supervisory authorities should cooperate with the relevant authorities in other enforcement areas as appropriate.***

## Amendment 24

### Proposal for a regulation

#### Recital 40

##### *Text proposed by the Commission*

(40) In order to strengthen the enforcement of the rules of this Regulation, each supervisory authority should have the power to impose penalties including

##### *Amendment*

(40) In order to strengthen the enforcement of the rules of this Regulation, each supervisory authority should have the power to impose penalties including

administrative fines for any infringement of this Regulation, in addition to, or instead of any other appropriate measures pursuant to this Regulation. This Regulation should indicate infringements and the upper limit and criteria for setting the related administrative fines, which should be determined by the competent supervisory authority in each individual case, taking into account all relevant circumstances of the specific situation, with due regard in particular to the nature, gravity and duration of the infringement and of its consequences and the measures taken to ensure compliance with the obligations under this Regulation and to prevent or mitigate the consequences of the infringement. For the purpose of setting a fine under this Regulation, an undertaking should be understood to be an undertaking in accordance with Articles 101 and 102 of the Treaty.

administrative fines for any infringement of this Regulation, in addition to, or instead of any other appropriate measures pursuant to this Regulation. This Regulation should indicate infringements and the upper limit and criteria for setting the related administrative fines, which should be determined by the competent supervisory authority in each individual case, taking into account all relevant circumstances of the specific situation, with due regard in particular to the nature, gravity and duration of the infringement and of its consequences and the measures taken to ensure compliance with the obligations under this Regulation and to prevent or mitigate the consequences of the infringement. For the purpose of setting a fine under this Regulation, an undertaking should be understood to be an undertaking in accordance with Articles 101 and 102 of the Treaty. ***Double penalties resulting from the infringement of both this Regulation and Regulation (EU) 2016/679 for the same act or omission should be avoided.***

## Amendment 25

### 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***

*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.

*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 accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>25</sup>. 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.*

---

<sup>25</sup> *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 26**

### **Proposal for a regulation**

#### **Recital 43**

*Text proposed by the Commission*

(43) Directive 2002/58/EC should be

*Amendment*

(43) Directive 2002/58/EC *and Commission Regulation (EU) 611/2013<sup>1a</sup>*

repealed.

should be repealed.

---

***1<sup>a</sup> Commission Regulation (EU) 611/2013 of 24 June 2013 on the measures applicable to the notification of personal data breaches under Directive 2002/58/EC of the European Parliament and of the Council on privacy and electronic communications (OJ L 173, 26.6.2013, p. 2).***

#### *Justification*

*The Commission Regulation (EU) 611/2013 setting out specific rules on data breach notifications should be repealed as its legal basis, Directive 2002/58/EC, will be repealed, and the GDPR will apply for breach notifications.*

#### **Amendment 27**

##### **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, ***in accordance with Regulation (EU) 2016/679***, free movement of electronic communications data and electronic communications services within the Union.

#### **Amendment 28**

##### **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

###### *Amendment*

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.

paragraphs 1 and 2. **Regulation (EU) 2016/679 applies to all matters concerning protection of fundamental rights and freedoms, which are not specifically covered by the provisions of this Regulation, including the obligations on the controller and the rights of individuals.**

## Amendment 29

### 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 in connection with the provision and the use of electronic communications services.

## Amendment 30

### Proposal for a regulation

#### Article 3 – paragraph 2

*Text proposed by the Commission*

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.**

*Amendment*

2. Where the provider of an electronic communications service is not established in the Union **the party identified pursuant to Article 27 of Regulation (EU) 2016/679 shall act as its representative in the Union.**

## Amendment 31

### Proposal for a regulation

#### Article 3 – paragraph 3

*Text proposed by the Commission*

3. **The representative shall be established in one of the Member States**

*Amendment*

**deleted**

*where the end-users of such electronic communications services are located.*

## Amendment 32

### 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 *during transmission*, such as by listening, tapping, storing, or other kinds of interception, *or* surveillance of electronic communications data, by persons other than the *sender or intended recipients*, shall be prohibited, except when permitted by this Regulation.

## Amendment 33

### Proposal for a regulation Article 6 – title

*Text proposed by the Commission*

*Permitted* processing of electronic communications data

*Amendment*

*Lawful* processing of electronic communications data

## Amendment 34

### Proposal for a regulation Article 6 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. Providers of *public* electronic communications networks and *publicly available electronic communications* services may process electronic communications data if:

(a) it is *technically* necessary to achieve the transmission of the communication, for the duration necessary

(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.

for that purpose; or

(b) it is **technically** necessary to maintain or restore the **availability, integrity, security and confidentiality of the respective** electronic communications networks and services, or **to** detect technical faults and/or errors in the transmission of electronic communications, **or to stop fraudulent use of the service** for the duration necessary for that purpose.

## Amendment 35

### Proposal for a regulation

#### Article 6 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**1a. Electronic communications data that is generated in the context of an electronic communications service designed particularly for children or directly targeted at children shall not be used for profiling or behaviourally targeted advertising purposes.**

## Amendment 36

### Proposal for a regulation

#### Article 6 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

2. Providers of electronic communications **networks and** 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<sup>28</sup> for the duration necessary for that purpose; or

(a) it is necessary **for quality of service purposes, including network management and** quality of service requirements pursuant to [Directive establishing the European Electronic Communications Code] or Regulation (EU) 2015/2120<sup>28</sup> for the duration necessary for that purpose; or

(b) it is necessary for billing,

(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.

---

<sup>28</sup> 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 37

### Proposal for a regulation Article 6 – paragraph 3

#### *Text proposed by the Commission*

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-

PE604.857v02-00

calculating interconnection payments, detecting or stopping fraudulent, or abusive use of, or subscription to, electronic communications services; or

***(ba) the further processing of the metadata 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;***

(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.

---

<sup>28</sup> 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*

3. Providers of the electronic communications services may process electronic communications content:
- (a) for the sole purpose of the provision of a specific service to an end-

32/50

AD\1133082EN.docx



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) 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.*

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) if *service providers'* end-users *have consented* to the processing of their electronic communications content *pursuant to Regulation (EU) 2016/679; or*

*(ba) for the sole purpose of the provision of a specific service explicitly requested by an end-user in the course of a purely personal, household or business activity, if the end-user concerned has consented to the processing of his or her electronic communications content and that service cannot be provided without the processing of such content.*

## Amendment 38

### Proposal for a regulation Article 7 – paragraph 1

#### *Text proposed by the Commission*

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 data, in accordance with Regulation (EU)

#### *Amendment*

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 party, *which could be the provider of the electronic communication service, specifically* entrusted by *the end-user* to record, store or otherwise process such

## Amendment 39

### Proposal for a regulation Article 7 – paragraph 2

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 ***or pseudonymous*** when it is no longer needed for the purpose of the transmission of a communication.

## Amendment 40

### Proposal for a regulation Article 8 – paragraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

1. The use of processing and storage capabilities of terminal equipment and the collection of ***personal data*** 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 ***technically*** 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
- (c) it is necessary for providing ***a*** service requested by the end-user ***especially in order to secure the integrity,***

(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.

*security and access of the information society service or for measures to protect against unauthorised use or access to the information society services in agreement with the terms of use for making available the service to the end-user; or*

(d) if it is necessary for audience measuring, provided that such measurement is carried out by, **or on behalf of** the provider of the information society service requested by the end-user, **including measurement of indicators for the use of information society services in order to calculate a payment due, and provided that such audience measurement does not adversely affect the fundamental rights of the end-user or it is necessary in order to obtain information about the technical quality or effectiveness of an information society service that has been delivered and has no or little impact on the privacy of the end-user concerned. Where audience measuring takes place on behalf of an information society service provider, the data collected shall be processed only for that provider and shall be kept separate from the data collected in the course of audience measuring on behalf of other providers; or**

**(da) it is necessary to protect privacy, security or safety of the end-user, or to protect confidentiality, integrity, availability, authenticity of the terminal equipment.**

## **Amendment 41**

### **Proposal for a regulation Article 8 – paragraph 2**

#### *Text proposed by the Commission*

2. The collection of information emitted by terminal equipment to enable it to connect to another device and, or to network equipment shall be prohibited,

#### *Amendment*

2. 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 take to stop or minimise the collection.

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.

## Amendment 42

### Proposal for a regulation Article 8 – paragraph 3

*Text proposed by the Commission*

**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.**

except if:

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

*(ab) the data are anonymised and the risks are adequately mitigated; or*

*(ac) it is necessary for the purpose of statistical counting, which 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.*

(b) *the end-user has given his or her consent after being informed by* a clear and prominent notice *for*, 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 take to stop or minimise the collection.

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.

*Amendment*

*deleted*

## Amendment 43

### Proposal for a regulation Article 8 – paragraph 4

*Text proposed by the Commission*

*Amendment*

**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.**

**deleted**

## Amendment 44

### Proposal for a regulation Article 8 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4 a. Terminal equipment that is intended particularly for children's use shall implement specific measures to prevent access to the equipment's storage and processing capabilities for the purpose of profiling of its users or tracking their behaviour with commercial intent.**

## Amendment 45

### Proposal for a regulation Article 9 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. 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.**

## Amendment 46

### Proposal for a regulation Article 9 – paragraph 3

*Text proposed by the Commission*

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*

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. **It shall be as easy to withdraw as to give consent.**

## Amendment 47

### Proposal for a regulation Article 10 – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

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 **the storage of** information on the terminal equipment of an end-user or **the processing of** information already stored on that equipment.

## Amendment 48

### Proposal for a regulation Article 10 – paragraph 2

*Text proposed by the Commission*

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**

*Amendment*

2. Upon installation, the software shall inform the end-user about the privacy settings options. **The technical settings shall consist of multiple options for the**

*consent to a setting.*

*end-user to choose from, including an option to prevent the storage of information on the terminal equipment of an end-user and the processing of information already stored on, or processed by, that equipment. These settings shall be easily accessible during the use of the software.*

## Amendment 49

### Proposal for a regulation Article 10 – paragraph 3

*Text proposed by the Commission*

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**.

*Amendment*

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 **one year after entry into force of this Regulation**.

## Amendment 50

### Proposal for a regulation Article 11 – paragraph 1

*Text proposed by the Commission*

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**

*Amendment*

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 **national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences.**

*exercise of official authority for such interests.*

## **Amendment 51**

### **Proposal for a regulation**

#### **Article 11 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1a.** *Member States law may not require the removal or the corruption of technical protection measures, such as end-to-end encryption; nor should it otherwise determine the nature of such measures, where these are applied directly by the provider of the electronic communications network, service or terminal equipment, or by the end-user.*

## **Amendment 52**

### **Proposal for a regulation**

#### **Article 12 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. Where presentation of the calling and connected line identification is offered in accordance with Article [107] of the [Directive establishing the European Electronic Communication Code], the providers of publicly available number-based interpersonal communications services shall provide the following:

1. Where presentation of the calling and connected line identification is offered in accordance with Article [107] of the [Directive establishing the European Electronic Communication Code], the providers of publicly available number-based interpersonal communications services shall provide the following, ***subject to technical feasibility and economic viability:***

## **Amendment 53**

### **Proposal for a regulation**

#### **Article 15 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. ***The*** providers of ***publicly available***

1. ***Without prejudice to Member***



*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.*

*States national law the providers of electronic information, communication and telecommunication services shall give end-users who are natural persons the right to object to data related to them being included in directories and shall provide a transparent information about the data being included in the directory and the means to verify, correct, update and delete such data.*

## Amendment 54

### Proposal for a regulation Article 15 – paragraph 2

*Text proposed by the Commission*

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.

*Amendment*

2. The providers of a publicly available directory shall **provide accessible and intelligible information to** end-users who are natural persons whose personal data are in the directory of the available search functions of the directory and **provide** end-users' **the option to disable** such search functions related to their own data.

## Amendment 55

### Proposal for a regulation Article 15 – paragraph 3

*Text proposed by the Commission*

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.

*Amendment*

3. The providers of **electronic information, communications and telecommunications services** 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, **update, supplement** and delete such data. **Natural persons acting in a professional**

*capacity, such as independent professionals, operators of small businesses or freelancers, shall be equated with legal persons.*

## **Amendment 56**

### **Proposal for a regulation Article 15 – paragraph 4**

*Text proposed by the Commission*

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.

*Amendment*

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

## **Amendment 57**

### **Proposal for a regulation Article 15 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**4a. The provisions of paragraphs 1 to 4 shall not apply to data and information published in other publicly accessible sources and data provided by end-users themselves, nor shall it apply to data published in publicly available directories before this Regulation enters into force unless the end-users have expressed their objection against their data being included in the directory or against available search functions related to their data pursuant to Article 17 of Regulation (EU) 2016/679.**

## **Amendment 58**

### **Proposal for a regulation Article 16 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

2. Where a natural or legal person obtains electronic contact details for ***e-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 about 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.

**Amendment 59**

**Proposal for a regulation  
Article 16 – paragraph 3**

*Text proposed by the Commission*

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.***

*Amendment*

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 ***present the identity of a line on which they can be contacted and may present a specific code/or prefix identifying the fact that the call is a marketing call.***

**Amendment 60**

**Proposal for a regulation  
Article 16 – paragraph 4**

*Text proposed by the Commission*

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.

*Amendment*

4. Notwithstanding paragraph 1, Member States may provide by law that the placing of direct marketing voice-to-voice calls to end-users shall only be allowed in respect of end-users who have not expressed their objection to receiving those communications. ***Member States may provide that users can object to receiving the unsolicited communications via a national Do Not Call Register, thereby also ensuring that the end-user is only required to opt out once.***

**Amendment 61**

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

*Amendment*

***deleted***

**Amendment 62**

**Proposal for a regulation  
Article 18 – paragraph 1**

*Text proposed by the Commission*

1. ***The independent supervisory authority or*** authorities responsible for monitoring the application of ***Regulation***

*Amendment*

1. ***Each Member State shall provide that one or more independent public*** authorities ***are*** responsible for monitoring

***(EU) 2016/679 shall also be responsible for monitoring the application of*** this Regulation. Chapter VI and VII of Regulation (EU) 2016/679 shall apply mutatis mutandis. The tasks and powers of the supervisory authorities shall be exercised with regard to end-users.

the application of this Regulation. Chapter VI and VII of Regulation (EU) 2016/679 shall apply mutatis mutandis. The tasks and powers of the supervisory authorities shall be exercised with regard to end-users.

## Amendment 63

### Proposal for a regulation Article 18 – paragraph 2

*Text proposed by the Commission*

2. The supervisory authority or authorities referred to in paragraph 1 shall cooperate whenever appropriate with national regulatory authorities established pursuant to the [Directive Establishing the European Electronic Communications Code].

*Amendment*

2. ***Each supervisory authority shall contribute to the consistent implementation of this Regulation throughout the Union.*** The supervisory authority or authorities referred to in paragraph 1 shall cooperate whenever appropriate with national regulatory authorities established pursuant to the [Directive Establishing the European Electronic Communications Code] ***and the national authorities responsible for monitoring the implementation of consumer protection legislation (Regulation (EU) .../... of the European Parliament and of the Council<sup>1a</sup>).***

---

***<sup>1a</sup> Regulation (EU) .../... of the European Parliament and of the Council of ... on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) 2006/2004 (OJ ...).***

## Amendment 64

### Proposal for a regulation Article 21 – paragraph 2

*Text proposed by the Commission*

2. ***Any natural or legal person other than end-users adversely affected by***

*Amendment*

***deleted***

*infringements of this Regulation and having a legitimate interest in the cessation or prohibition of alleged infringements, including a provider of electronic communications services protecting its legitimate business interests, shall have a right to bring legal proceedings in respect of such infringements.*

#### **Amendment 65**

##### **Proposal for a regulation Article 22 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

*Any end-user of electronic communications services who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the infringer for the damage suffered, unless the infringer proves that it is not in any way responsible for the event giving rise to the damage in accordance with Article 82 of Regulation (EU) 2016/679.*

*deleted*

#### **Amendment 66**

##### **Proposal for a regulation Chapter 6 – title**

*Text proposed by the Commission*

*Amendment*

**DELEGATED ACTS AND  
IMPLEMENTING ACTS**

**IMPLEMENTING ACTS**

#### **Amendment 67**

##### **Proposal for a regulation Article 25**

*Text proposed by the Commission*

*Amendment*

*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 data 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 68**

**Proposal for a regulation**  
**Article 27 – paragraph 1**

*Text proposed by the Commission*

1. Directive 2002/58/EC is repealed with effect from **25 May 2018**.

*Amendment*

1. Directive 2002/58/EC **and Regulation 611/2013 are** repealed with effect from **[XXX]**.



## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	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)	
<b>References</b>	COM(2017)0010 – C8-0009/2017 – 2017/0003(COD)	
<b>Committee responsible</b> Date announced in plenary	LIBE 16.2.2017	
<b>Opinion by</b> Date announced in plenary	IMCO 16.2.2017	
<b>Rapporteur</b> Date appointed	Eva Maydell 9.2.2017	
<b>Discussed in committee</b>	4.9.2017	25.9.2017
<b>Date adopted</b>	28.9.2017	
<b>Result of final vote</b>	+	19
	-	13
	0:	5
<b>Members present for the final vote</b>	John Stuart Agnew, Pascal Arimont, Dita Charanzová, Carlos Coelho, Sergio Gaetano Cofferati, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Pascal Durand, Evelyne Gebhardt, Maria Grapini, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Philippe Juvin, Antonio López-Istúriz White, Jiří Maštálka, Eva Maydell, Marlene Mizzi, Nosheena Mobarik, Jiří Pospíšil, Marcus Pretzell, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Mihai Țurcanu, Anneleen Van Bossuyt, Marco Zullo	
<b>Substitutes present for the final vote</b>	Lucy Anderson, Edward Czesak, Kaja Kallas, Adam Szejnfeld, Matthijs van Miltenburg, Lambert van Nistelrooij	
<b>Substitutes under Rule 200(2) present for the final vote</b>	Vladimir Urutchev	

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

19	+
ALDE	Dita Charanzová, Kaja Kallas, Matthijs van Miltenburg
ECR	Edward Czesak, Daniel Dalton, Nosheena Mobarik, Anneleen Van Bossuyt
PPE	Pascal Arimont, Carlos Coelho, Anna Maria Corazza Bildt, Philippe Juvin, Antonio López-Istúriz White, Eva Maydell, Jiří Pospíšil, Adam Szejnfeld, Vladimir Urutchev, Lambert van Nistelrooij, Ivan Štefanec, Mihai Țurcanu

13	-
EFDD	John Stuart Agnew
GUE/NGL	Jiří Maštálka
S&D	Lucy Anderson, Sergio Gaetano Cofferati, Nicola Danti, Evelyne Gebhardt, Maria Grapini, Liisa Jaakonsaari, Marlene Mizzi, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler

5	0
EFDD	Robert Jarosław Iwaszkiewicz, Marco Zullo
ENF	Marcus Pretzell
Verts/ALE	Pascal Durand, Igor Šoltes

Key to symbols:

+ : in favour

- : against

0 : abstention