



**2017/0003(COD)**

29.5.2017

## **DRAFT 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



## 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 purposes. 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.

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.

Or. en

## Amendment 2

### Proposal for a regulation

#### Recital 3

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

(3) Electronic communications data may also reveal information concerning legal entities, such as business secrets or other sensitive information that has economic value. Therefore, the provisions of this Regulation should apply to both natural and legal persons. Furthermore, this Regulation should ensure that provisions of the Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>4</sup>, also apply to end-users who are legal persons. ***This includes the definition of consent under Regulation (EU) 2016/679. When reference is made to consent by an end-user, including legal persons, this definition should apply.*** In addition, legal persons should have the same rights as end-users that are natural persons regarding the supervisory authorities; furthermore, supervisory authorities under this Regulation should also be responsible for monitoring the application of this Regulation regarding legal persons.

##### *Amendment*

(3) Electronic communications data may also reveal information concerning legal entities, such as business secrets or other sensitive information that has economic value. Therefore, the provisions of this Regulation should apply to both natural and legal persons. Furthermore, this Regulation should ensure that provisions of the Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>4</sup>, also apply to end-users who are legal persons. In addition, legal persons should have the same rights as end-users that are natural persons regarding the supervisory authorities; furthermore, supervisory authorities under this Regulation should also be responsible for monitoring the application of this Regulation regarding legal persons.

<sup>4</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. 1–88).

<sup>4</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. 1–88).

Or. en

### Amendment 3

#### Proposal for a regulation Recital 5

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

(5) The provisions of this Regulation particularise and complement the general rules on the protection of personal data laid down in Regulation (EU) 2016/679 as regards electronic communications data that qualify as personal data. This Regulation therefore does not lower the level of protection enjoyed by natural persons under Regulation (EU) 2016/679. Processing of electronic communications data by providers of electronic communications services should only be permitted in accordance with this Regulation.

##### *Amendment*

(5) The provisions of this Regulation particularise and complement the general rules on the protection of personal data laid down in Regulation (EU) 2016/679 as regards electronic communications data that qualify as personal data ***without going beyond the level of protection set down in Regulation (EU) 2016/679***. This Regulation therefore does not lower the level of protection enjoyed by natural persons under Regulation (EU) 2016/679. Processing of electronic communications data by providers of electronic communications services should only be permitted in accordance with this Regulation.

Or. en

### Amendment 4

#### Proposal for a regulation Recital 6

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

(6) While the principles and main

##### *Amendment*

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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.

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<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).

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.

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<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).

Or. en

## Amendment 5

### 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

##### *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 *commercial* communications or collect information related to or stored in end-users' terminal equipment.

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.

Or. en

## Amendment 6

### Proposal for a regulation

#### Recital 12

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

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

##### *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, *it may constitute a publicly available* electronic communications service. In *such cases, 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 *and* the principle of confidentiality *hereby* enshrined should apply to the transmission of machine-to-machine communications. *This Regulation should not apply to machine-to-machine communications not provided as a service which targets the general population.*

Or. en



## Amendment 7

### 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. This Regulation should not apply to closed groups of end-users such as corporate networks. 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.***

Or. en

## Amendment 8

### Proposal for a regulation Recital 15

(15) ***Electronic communications data should be treated as confidential. This means that any interference with the transmission of electronic communications data, whether directly by human intervention or through the intermediation of automated processing by machines, without the consent of all the communicating parties should be prohibited.*** The prohibition of interception of communications data should apply during their conveyance, i.e. until receipt of the content of the electronic communication by the intended addressee. Interception of electronic communications data may occur, for example, when someone other than the communicating parties, listens to calls, reads, scans or stores the content of electronic communications, or the associated metadata for purposes other than the exchange of communications. Interception also occurs when third parties monitor websites visited, timing of the visits, interaction with others, etc., without the consent of the end-user concerned. As technology evolves, the technical ways to engage in interception have also increased. Such ways may range from the installation of equipment that gathers data from terminal equipment over targeted areas, such as the so-called IMSI (International Mobile Subscriber Identity) catchers, to programs and techniques that, for example, surreptitiously monitor browsing habits for the purpose of creating end-user profiles. Other examples of interception include capturing payload data or content data from unencrypted wireless networks and routers, including browsing habits without the end-users' consent.

(15) The prohibition of interception of communications data should apply during their conveyance, i.e. until receipt of the content of the electronic communication by the intended addressee. Interception of electronic communications data may occur, for example, when someone other than the communicating parties, listens to calls, reads, scans or stores the content of electronic communications, or the associated metadata for purposes other than the exchange of communications. Interception also occurs when third parties monitor websites visited, timing of the visits, interaction with others, etc., without the consent of the end-user concerned. As technology evolves, the technical ways to engage in interception have also increased. Such ways may range from the installation of equipment that gathers data from terminal equipment over targeted areas, such as the so-called IMSI (International Mobile Subscriber Identity) catchers, to programs and techniques that, for example, surreptitiously monitor browsing habits for the purpose of creating end-user profiles. Other examples of interception include capturing payload data or content data from unencrypted wireless networks and routers, including browsing habits without the end-users' consent.

Or. en

## 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 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,

#### *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, based on end-users consent. However, end-users attach great importance to the confidentiality of their communications, including their online activities, and that they want to control the use of electronic communications data for purposes other than conveying the communication. Therefore, this Regulation should require providers of electronic communications services to obtain end-users' consent to ***further*** process electronic communications metadata, which should include data on the location of the device. ***As an exception from obtaining end-users' consent, 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 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

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.

could not be displayed. ***Therefore, whenever the purpose(s) of further processing of data cannot be achieved by processing data that is made anonymous, pseudonymisation of data should be allowed.*** 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.

Or. en

## **Amendment 10**

### **Proposal for a regulation**

#### **Recital 18**

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

(18) End-users may consent to the processing of their metadata to receive specific services such as protection services against fraudulent activities (by analysing usage data, location and customer account in real time). In the digital economy, services are often supplied against counter-performance other than money, for instance by end-users being exposed to advertisements. For the purposes of this Regulation, consent of an end-user, regardless of whether the latter is a natural or a legal person, should have the

##### *Amendment*

(18) End-users may consent to the processing of their metadata to receive specific services such as protection services against fraudulent activities (by analysing usage data, location and customer account in real time). In the digital economy, services are often supplied against counter-performance other than money, for instance by end-users being exposed to advertisements. For the purposes of this Regulation, consent of an end-user, regardless of whether the latter is a natural or a legal person, should have the

same meaning and be subject to the same conditions as the data subject's consent under Regulation (EU) 2016/679. Basic broadband internet access and voice communications services are to be considered as essential services for individuals to be able to communicate and participate to the benefits of the digital economy. ***Consent for processing data from internet or voice communication usage will not be valid if the data subject has no genuine and free choice, or is unable to refuse or withdraw consent without detriment.***

same meaning and be subject to the same conditions as the data subject's consent under Regulation (EU) 2016/679. Basic broadband internet access and voice communications services are to be considered as essential services for individuals to be able to communicate and participate to the benefits of the digital economy.

Or. en

## Amendment 11

### Proposal for a regulation Recital 19

#### *Text proposed by the Commission*

(19) The content of electronic communications pertains to the essence of the fundamental right to respect for private and family life, home and communications protected under Article 7 of the Charter. Any interference with the content of electronic communications should be allowed only under very clear defined conditions, for specific purposes and be subject to ***adequate*** safeguards against abuse. This Regulation provides for the possibility of providers of electronic communications services to process electronic communications data in transit, with the informed consent of all the end-users concerned. For example, providers may offer services that entail the scanning of emails to remove certain pre-defined material. ***Given the sensitivity of the content of communications, this Regulation sets forth a presumption that the processing of such content data will result in high risks*** to the rights and

#### *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 ***pursuant to Regulation (EU) 2016/679.*** 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. ***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

freedoms of natural persons. **When processing such type of data**, the provider of the electronic communications service should always consult the supervisory authority prior to the processing. Such consultation should be in accordance with Article 36 (2) and (3) of Regulation (EU) 2016/679. The **presumption** does not encompass the processing of content data to provide a service requested by the end-user where the end-user has consented to such processing and it is carried out **for the purposes and duration strictly necessary and proportionate for such service**. After electronic communications content has been sent by the **end-user** and received by the intended **end-user or end-users**, it may be recorded or stored by the **end-user, end-users** or by a third party entrusted by them to record or store such data. Any processing of such data must comply with Regulation (EU) 2016/679.

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 and it is carried out **pursuant to Regulation (EU) 2016/679**. After electronic communications content has been sent by the **sender** and received by the intended **recipient(s)**, it may be recorded or stored by the **sender, the recipient(s)** or by a third 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.

Or. en

## Amendment 12

### Proposal for a regulation Recital 20

#### *Text proposed by the Commission*

(20) Terminal equipment of end-users of electronic communications networks and any information relating to the usage of such terminal equipment, whether in particular is stored in or emitted by such equipment, requested from or processed in order to enable it to connect to another device and or network equipment, are part of the private sphere of the end-users

#### *Amendment*

(20) Terminal equipment of end-users of electronic communications networks and any information relating to the usage of such terminal equipment, whether in particular is stored in or emitted by such equipment, requested from or processed in order to enable it to connect to another device and or network equipment, are part of the private sphere of the end-users

requiring protection under the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Given that such equipment contains or processes information that may reveal details of an individual's emotional, political, social complexities, including the content of communications, pictures, the location of individuals by accessing the device's GPS capabilities, contact lists, and other information already stored in the device, the information related to such equipment requires enhanced privacy protection. Furthermore, the so-called spyware, web bugs, hidden identifiers, tracking cookies and other similar *unwanted* tracking tools can enter end-user's terminal equipment without their knowledge in order to gain access to information, to store hidden information and to trace the activities. Information related to the end-user's device may also be collected remotely for the purpose of identification and tracking, using techniques such as the so-called 'device fingerprinting', often without the knowledge of the end-user, and may seriously intrude upon the privacy of these end-users. Techniques that surreptitiously monitor the actions of end-users, for example by tracking their activities online or the location of their terminal equipment, or subvert the operation of the end-users' terminal equipment pose a serious threat to the privacy of end-users. Therefore, any such interference with the end-user's terminal equipment should be allowed only with the end-user's consent and for specific and transparent purposes.

requiring protection under the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Given that such equipment contains or processes information that may reveal details of an individual's emotional, political, social complexities, including the content of communications, pictures, the location of individuals by accessing the device's GPS capabilities, contact lists, and other information already stored in the device, the information related to such equipment requires enhanced privacy protection. Furthermore, the so-called spyware, web bugs, hidden identifiers, tracking cookies and other similar tracking tools can enter end-user's terminal equipment without their knowledge in order to gain access to information, to store hidden information and to trace the activities. Information related to the end-user's device may also be collected remotely for the purpose of identification and tracking, using techniques such as the so-called 'device fingerprinting', often without the knowledge of the end-user, and may seriously intrude upon the privacy of these end-users. Techniques that surreptitiously monitor the actions of end-users, for example by tracking their activities online or the location of their terminal equipment, or subvert the operation of the end-users' terminal equipment pose a serious threat to the privacy of end-users. Therefore, any such interference with the end-user's terminal equipment should be allowed only with the end-user's consent and for specific and transparent purposes.

Or. en

## **Amendment 13**

### **Proposal for a regulation**

#### **Recital 24**

*Text proposed by the Commission*

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

*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 **a preferred option after being** 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 **and enabled** to choose the privacy settings among the various options. Information provided **may** include **examples of benefits and** risks associated **with** allowing third party cookies to be stored in the computer. Web browsers **should** provide easy ways for end-users to change the privacy settings at any time during use and to allow the user to make exceptions for or to whitelist certain websites or to specify for which websites (third) party cookies are always or never allowed.

Or. en



## Amendment 14

### 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 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

##### *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 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 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).

account the role of the representative designated pursuant to Article 27 of **Regulation (EU) 2016/679**.

Or. en

## Amendment 15

### 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 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. ***To ensure compliance with the requirements of Articles 32 and 42 of Regulation (EU) 2016/679 the Commission may, following consultation with the European Union Agency for Network and Information Security (ENISA) and the European Data Protection Board, adopt implementing acts related to convergent application of security standards protecting the confidentiality, integrity, availability and resilience of systems and services.***

Or. en

## Amendment 16

### Proposal for a regulation Recital 41

#### *Text proposed by the Commission*

(41) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted ***in respect of the information to be presented, including by means of standardised icons in order to give an easily visible and intelligible overview of the collection of information emitted by terminal equipment, its purpose, the person responsible for it and of any measure the end-user of the terminal equipment can take to minimise the collection. Delegated acts are also necessary*** to specify a code to identify direct marketing calls including those made through automated calling and communication systems. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>8</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

#### *Amendment*

(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 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>8</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.

this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

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<sup>8</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).

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<sup>8</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).

Or. en

## Amendment 17

### 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.

Or. en

## Amendment 18

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

*Amendment*

***deleted***

Or. en

## Amendment 19

### Proposal for a regulation

#### Article 4 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

## Amendment 20

### Proposal for a regulation

#### Article 4 – paragraph 3 – point f

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

## Amendment 21

### Proposal for a regulation

#### Article 5 – paragraph 1

*Text proposed by the Commission*

*Amendment*

Electronic communications data shall be confidential. Any interference with

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.

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

Or. en

## Amendment 22

### Proposal for a regulation

#### Article 6 – paragraph 1 – point b

*Text proposed by the Commission*

(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*.

*Amendment*

(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.

Or. en

## Amendment 23

### Proposal for a regulation

#### Article 6 – paragraph 2 – point b a (new)

*Text proposed by the Commission*

*Amendment*

*(ba) the processing is compatible with the purposes for which the data were initially collected, as set forth in Article 6(4) of Regulation (EU) 2016/679;*

Or. en

## Amendment 24

### Proposal for a regulation

#### Article 6 – paragraph 2 – point c

*Text proposed by the Commission*

(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.

*Amendment*

(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 *or pseudonymised*.

Or. en

## Amendment 25

### Proposal for a regulation

#### Article 6 – paragraph 3 – point b

*Text proposed by the Commission*

(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.*

*Amendment*

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

Or. en

## Amendment 26

### Proposal for a regulation

#### Article 7

**Article 7**

**deleted**

***Storage and erasure of electronic communications data***

***1. Without prejudice to point (b) of Article 6(1) and points (a) and (b) of Article 6(3), the provider of the electronic communications service shall erase electronic communications content or make that data anonymous after receipt of electronic communication content by the intended recipient or recipients. Such data may be recorded or stored by the end-users or by a third party entrusted by them to record, store or otherwise process such data, in accordance with Regulation (EU) 2016/679.***

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

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

Or. en

**Amendment 27**

**Proposal for a regulation**

**Article 8 – paragraph 1 – introductory part**



*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:

*Amendment*

1. The use of 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:

Or. en

**Amendment 28**

**Proposal for a regulation**

**Article 8 – paragraph 1 – point d**

*Text proposed by the Commission*

(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.***

*Amendment*

(d) if it is necessary for web audience measuring, provided that ***the end-user has given his or her consent.***

Or. en

**Amendment 29**

**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.

*Amendment*

3. The information to be provided pursuant to point (b) of paragraph 2 ***shall*** be provided in an easily visible, intelligible and clearly legible manner.

Or. en

## Amendment 30

### 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**

Or. en

## Amendment 31

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

*Text proposed by the Commission*

*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 *and be reminded of this possibility at periodic intervals of 6 months, as long as the processing continues.***

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.

Or. en

### *Justification*

*The rapporteur believes that this solution may be a disproportionate burden for SMEs and Startup companies, as well as big businesses. It may also result in excessive notifications for the end-users.*

## Amendment 32

### 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 consent to a setting.***

*Amendment*

2. Upon installation, the software shall inform the end-user about the privacy settings options.

Or. en

## Amendment 33

### Proposal for a regulation

#### Article 10 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. The software shall enable end-users to customise their privacy settings according to the websites visited.***

Or. en

#### *Justification*

*The rapporteur believes that this would increase the freedom of choice for the end-users, and would provide for self-regulatory approach for privacy-friendly practices, if websites are to attract more end-users to whitelist them.*

## Amendment 34

### Proposal for a regulation

#### Article 11 – paragraph 1

*Text proposed by the Commission*

*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

1. Union or Member State law may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 5 to 8 where such a restriction respects the essence of the fundamental rights and freedoms and is a

necessary, appropriate and proportionate measure in a democratic society *to safeguard one or more of the general public interests referred to in Article 23(1)(a) to (e) of Regulation (EU) 2016/679 or a monitoring, inspection or regulatory function connected to the exercise of official authority for such interests.*

necessary, appropriate and proportionate measure in a democratic society.

Or. en

## Amendment 35

### Proposal for a regulation Article 11 – paragraph 2

#### *Text proposed by the Commission*

2. Providers of electronic communications services shall establish internal procedures for responding to requests for access to end-users' electronic communications data based on a legislative measure adopted pursuant to paragraph 1. They shall provide the competent supervisory authority, on demand, with information about those procedures, the number of requests received, the legal justification invoked and their response.

#### *Amendment*

2. Providers of electronic communications services shall establish internal procedures for responding to requests for access to end-users' electronic communications data based on a legislative measure adopted pursuant to paragraph 1. ***Without prejudice to any requirements under Member State law to provide information to competent law enforcement authorities,*** they shall provide the competent supervisory authority, on demand, with information about those procedures, the number of requests received, the legal justification invoked and their response. ***Providers shall respond to requests for access in accordance with the legal requirements where the service provider has its main establishment under Regulation (EU) 2016/679. For requests from a Member State where the service provider is not established, cross-border mechanisms for requests under mutual legal assistance conventions or Directive 2014/41/EU of the European Parliament and of the Council<sup>1a</sup> shall be followed.***

*<sup>1a</sup> Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).*

Or. en

## Amendment 36

### Proposal for a regulation Article 15 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. The providers of **electronic communication services** shall obtain the consent of end-users who are natural persons to **share** their personal data **to a public** directory and shall **provide a transparent information about the data being included in the directory in order to allow the end-user to make an informed decision.**

Or. en

## Amendment 37

### 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**

*Amendment*

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 shall give end-users who are natural persons the means to verify, correct and delete**

data.

*such* data.

Or. en

## Amendment 38

### 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 electronic mail **or phone number** 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 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.

Or. en

## Amendment 39

### Proposal for a regulation Article 16 – paragraph 3 – introductory part

*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:

*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 40

##### Proposal for a regulation Article 16 – paragraph 3 – point a

*Text proposed by the Commission*

*Amendment*

(a) *present the identity of a line on which they can be contacted; or* **deleted**

Or. en

#### Amendment 41

##### Proposal for a regulation Article 16 – paragraph 3 – point b

*Text proposed by the Commission*

*Amendment*

(b) *present a specific code/or prefix identifying the fact that the call is a marketing call.* **deleted**

Or. en

#### Amendment 42

##### Proposal for a regulation Article 17 – title

*Text proposed by the Commission*

*Amendment*

Information about *detected* security *risks*

Information about *risks of* security *breach*

Or. en

#### Amendment 43

##### Proposal for a regulation Article 17 – paragraph 1

*Text proposed by the Commission*

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*

In the case of a ***serious risk of breach of*** the security of networks and electronic communications services, the provider of an electronic communications service shall inform end-users concerning such ***a serious*** risk and, where the ***serious*** risk lies outside the scope of the measures to be taken by the service provider, inform end-users of any possible remedies.

Or. en

*Justification*

*Recent cases of global cyber attacks are a good example of risks of security breach, when the provider can inform the end-user regarding the potential damage or risk of security breach.*