

(English version)

**Question for written answer E-000389/20  
to the Commission  
Birgit Sippel (S&D)  
(23 January 2020)**

*Subject:* Enforcement of the directive on privacy and electronic communications

Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (ePrivacy Directive), last amended by Directive 2009/136/EC, has not been correctly implemented by all of the Member States, for example with regard to an opt-in requirement for non-functional cookies. The coming into application of the GDPR has substantially modified Directive 2002/58/EC.

In addition, in his opinion on several joint cases on national data retention schemes of 15 January 2020, the Advocate General of the Court of Justice of the European Union found the data retention laws of France, Belgium and the United Kingdom to be incompatible with the ePrivacy Directive. However, the Commission has not started any infringement proceedings against Member States for incorrect or incomplete transposition. .

1. When will the Commission give a full and detailed overview of the state of play of implementation of the ePrivacy Directive in each Member State? .
2. When will it launch infringement proceedings against those Member States that have breached the provisions of the ePrivacy Directive?
3. If not, can it explain how, for example, a mere opt-out requirement for tracking cookies or the aforementioned national data retention laws are in line with EC law in its view? .

**Answer given by Mr Breton on behalf of the European Commission  
(29 April 2020)**

While the proposed ePrivacy Regulation <sup>(1)</sup> is currently being discussed in the Council, the ePrivacy Directive <sup>(2)</sup> remains applicable. In addition, as from 21 December 2020, the directive will apply to a broader set of electronic communications services as defined in the European Electronic Communications Code. <sup>(3)</sup>

The General Data Protection Regulation (GDPR) <sup>(4)</sup> became applicable in May 2018, and as a consequence the definition and conditions for a valid consent as laid down in the GDPR shall apply also in the context of the ePrivacy Directive. For instance, opt-out mechanisms or silence does not constitute valid consent <sup>(5)</sup>.

The national laws transposing the ePrivacy Directive need to be in accordance with these changes introduced by the GDPR. Acting as the guardian of the Treaties, in April 2019 the Commission asked Member States for information regarding the implementation of certain provisions. The European Commission has conducted a first analysis of the replies and continues its investigation. The Commission will then decide whether and to what extent enforcement action, which needs to be based on facts, is required.

Regarding national data retention schemes, they need to be compliant with Article 15 of the ePrivacy Directive. The Commission is monitoring developments at the Court of Justice of the EU on a number of legal frameworks and will assess the need for further action once the judgments in the relevant pending cases are delivered.

---

<sup>(1)</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017PC0010>

<sup>(2)</sup> Directive 2002/58/EC - <https://eur-lex.europa.eu/eli/reg/2019/1150/oj>

<sup>(3)</sup> Directive (EU) 2018/1972 - <https://eur-lex.europa.eu/eli/dir/2018/1972/oj>

<sup>(4)</sup> Regulation (EU) 2016/679 - <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

<sup>(5)</sup> See Recital (32) GDPR.