



Brussels, 5 December 2017  
(OR. en)

15333/17

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**Interinstitutional File:**  
2017/0003 (COD)

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TELECOM 336  
COMPET 852  
MI 917  
DATAPROTECT 201  
CONSOM 389  
JAI 1158  
DIGIT 270  
FREMP 143  
CYBER 204  
CODEC 1990

#### NOTE

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From: Presidency  
To: Delegations

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No. Cion doc.: 5358/17 TELECOM 12 COMPET 32 MI 45 DATAPROTECT 4 CONSOM  
19 JAI 40 DIGIT 10 FREMP 3 CYBER 10 IA 12 CODEC 52

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Subject: 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)  
- Examination of the Presidency text

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#### I. INTRODUCTION

1. With a view to the WP TELE meeting of 11 December, delegations will find in Annex a Presidency text on the above file. In order to facilitate future work on this file, the Presidency has put together a full text of the proposal, consolidating the work done in the second half of 2017 (doc. 11995/17, 12955/17 and 13217/17+COR). The latest changes introduced in the text concern, however, only articles 6 to 8 and the related recitals. The objective of the WP TELE meeting will be:

- to discuss articles 6 to 8, on the basis of the amended text,
- to exchanges views on article 10, and
- to raise any questions that still require clarifications.

2. As the Presidency noted in its progress report (doc. 14374/17+ COR 1), further analysis is necessary with regard to articles 6, 7 and 8 on a number of elements, namely:

- as to whether, and to what extent, the grounds for processing proposed by the Commission need to be complemented by additional grounds;
- in relation to certain grounds permitted under the GDPR, keeping in mind the specific nature of the electronic communications data; and
- on the issue of the protection of the end-users' terminal equipment and the need to find a balance between ensuring proper privacy protection without undermining legitimate business models.

3. The Presidency has therefore analysed various proposals submitted by delegations as well as relevant provisions of the GDPR and put together a number of modifications for delegations' consideration. Delegations will find below the details on those modifications below. For ease of reference, the latest changes are marked in underline.

## II. AMENDMENTS TO THE TEXT

### i. Permitted processing (art. 6)

- **art. 6(2)(b)**: The provision has been amended to allow processing necessary for performance of the contract with the end-user. It is inspired by a similar provision in the GDPR (art. 6(1)(b)).
- **art. 6(2)(ba)**: The Presidency has included the legal ground of compliance with a legal obligation. The provision is inspired by a similar provision in the GDPR (art. 6(1)(c)).
- **art. 6(2)(c)**: The provision has been amended to reflect the fact that the end-user may be natural or legal person.
- **art. 6(2)(d)**: The Presidency has included the legal ground of vital interest. The provision took inspiration in a similar provision in the GDPR (art. 9(2)(c)). It is accompanied by a **new recital 17a**.
- **art. 6(2)(e)**: The Presidency has included the legal ground of scientific research and statistical purposes, which is largely inspired by art. 9(2)(j) of the GDPR. It is accompanied by a **new recital 17b**.
- **art. 6(3)(a)**: The provision has been amended to reflect the fact that the end-user may be natural or legal person.
- **art. 6(3)(aa)**: The new provision allows processing of data for the purpose of an explicitly requested service for individual use based on the consent of the requesting end-user as long as fundamental rights and interests of other end-users have been adequately protected. Accompanying **recital 19a** explains what kind of services are targeted by this exception.
- **art. 6(3)(b)**: The Presidency has included, as one of the conditions for this exception, an obligation to carry out an impact assessment of the processing operations in accordance with GDPR (art. 36(2)(e)).

- **art. 6(4)**: The new provision allows processing of electronic communications data by a third party on behalf of the electronic communications service provider.

## **ii. Storage and erasure (art. 7)**

- **art. 7(1)**: The Presidency would like to invite delegations to reflect on the need for this provision, considering the corresponding obligations under the GDPR and also in relation to the limitation of scope in art. 2 to 'content in transmission'.

- **art. 7(2)**: The reference has been aligned with art 6(2). Moreover, the Presidency has included a clarification that end-users or a third party entrusted by them may record, store or otherwise process their metadata. Delegations are invited to share their views in this regard, considering that this particular issue should be covered under this Regulations and not under GDPR.

## **iii. Protection of terminal equipment (art. 8)**

- **recital 21** has been amended to provide more examples of varying levels of privacy intrusion by different types of cookies.

- **art. 8(1)(e)**: The Presidency has further improved the exception for security updates. This has been accompanied by further changes in **recital 21**.

- **art. 8(1)(f)**: The Presidency has included a new exception for locating a caller of an emergency call. This provision might, to an extent, overlap with art. 13(3). Delegations are invited to suggest which article should address this issue.

- **recital 25** has been amended to provide more clarity on inclusion of WiFi signal and 'statistical counting' in art. 8(2)(c).

## **III. CONCLUSION**

4. At the WP TELE of 11 December, the Presidency will invite delegations to express their views on the Presidency's proposals as outlined above.

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)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Having regard to the opinion of the European Data Protection Supervisor<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

- (1) Article 7 of the Charter of Fundamental Rights of the European Union ("the Charter") protects the fundamental right of everyone to the respect for his or her private and family life, home and communications. Respect for the privacy of one's communications is an essential dimension of this right, **applying both to natural and legal persons**. Confidentiality of electronic communications ensures that information exchanged between parties and the external elements of such communication, including when the information has been sent, from where, to whom, is not to be revealed to anyone other than to the parties involved in a communication. The principle of confidentiality should apply to current and future means of communication, including calls, internet access, instant messaging applications, e-mail, internet phone calls and personal messaging provided through social media.
- (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 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.

- (2a) **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. If no specific rules are established in this Regulation, Regulation (EU) 2016/679 should apply to any processing of electronic communications data that qualify as personal data. Insofar as end-users who are legal persons are concerned, provisions of Regulation (EU) 2016/679 should apply only to the extent specifically required by this Regulation.**
- (3) Electronic communications data may also reveal information concerning legal entities, such as business secrets or other sensitive information that has economic value **and the protection of which allows legal persons to conduct their business, supporting among other innovation.** Therefore, the provisions of this Regulation should **in principle** apply to both natural and legal persons. Furthermore, this Regulation should ensure that, **where necessary**, provisions of the Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>4</sup>, also apply *mutatis mutandis* to end-users who are legal persons. This includes the definition of **provisions on 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.~~

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<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).

- (3a) **This Regulation should not affect national law regulating for instance the conclusion or the validity of a contract. Similarly, this Regulation should not affect national law in relation to determining who has the legal power to represent legal persons in any dealings with third parties or in legal proceedings.**
- (4) Pursuant to Article 8(1) of the Charter and Article 16(1) of the Treaty on the Functioning of the European Union, everyone has the right to the protection of personal data concerning him or her. Regulation (EU) 2016/679 lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data. Electronic communications data may include personal data as defined in Regulation (EU) 2016/679.
- ~~(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.~~

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

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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).

- (8) This Regulation should apply to providers of electronic communications services, to providers of publicly available directories, and to ~~software~~ providers **of software** 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 **or present** direct marketing commercial communications or **make use of processing and storage capabilities of terminal equipment** or collect information ~~related to~~ **processed by or emitted by** or stored in end-users' terminal equipment. **Furthermore, this Regulation should apply regardless of whether the processing of electronic communications data or personal data of end-users who are in the Union takes place in the Union or not, or of whether the service provider or person processing such data is established or located in the Union or not.**
- ~~(9) This Regulation should apply to electronic communications data processed in connection with the provision and use of electronic communications services in the Union, regardless of whether or not the processing takes place in the Union. Moreover, in order not to deprive end-users in the Union of effective protection, this Regulation should also apply to electronic communications data processed in connection with the provision of electronic communications services from outside the Union to end-users in the Union.~~
- (10) Radio equipment and its software which is placed on the internal market in the Union, must comply with Directive 2014/53/EU of the European Parliament and of the Council<sup>6</sup>. This Regulation should not affect the applicability of any of the requirements of Directive 2014/53/EU nor the power of the Commission to adopt delegated acts pursuant to Directive 2014/53/EU requiring that specific categories or classes of radio equipment incorporate safeguards to ensure that personal data and privacy of end-users are protected.

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<sup>6</sup> Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).

- (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 [Directive of the European Parliament and of the Council establishing the European Electronic Communications Code<sup>7</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.
- (11a) 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. In such cases, this Regulation applies only to the ancillary feature itself and the electronic communications functionality it provides. To determine whether an electronic communications functionality constitutes an ancillary feature, the end-users expectations have to be taken into account. For example such communications functionality is considered to be ancillary feature in all the circumstances where electronic communication is taking place between a finite, that is to say not potentially unlimited, number of end-users which is determined by the sender of the communications, e.g. any messaging application allowing two or more people to connect and communicate. However, where access to an electronic communications functionality is available for anyone, e.g. an electronic communications channel in online games which is open to all persons playing the game, such channel does not constitute an ancillary feature.**

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<sup>7</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)).

(12) ~~Connected devices and machines increasingly communicate with each other by using electronic communications networks (Internet of Things).~~ **The use of machine-to-machine services, that is to say services involving an automated transfer of data and information between devices or software-based applications with limited or no human interaction, is emerging. While the services provided at the application-layer of such services do normally not qualify as an electronic communications service as defined in the [Directive establishing the European Electronic Communications Code], ~~the transmission services used for the provision of machine-to-machine communications services regularly involves the conveyance of signals over~~ **via an electronic communications network and, hence, usually normally 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, **in particular the requirements relating to the confidentiality of communications,** should apply to the transmission of machine-to-machine **electronic communications where carried out via an electronic communications service.** ~~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.**

- (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, **regardless if these networks are secured with passwords or not**, 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 **pre-defined group of end-users, e.g.** to members of the corporation. **Therefore, only networks providing access to a group of end-users which is not pre-defined and where end-users get access to the network under the same conditions, e.g. wifi network of a department store open to all customers, are regulated by this Regulation.**

- (14) Electronic communications data should be defined in a sufficiently broad and technology neutral way so as to encompass any information concerning the content transmitted or exchanged (electronic communications content) and the information concerning an end-user of electronic communications services processed for the purposes of transmitting, distributing or enabling the exchange of electronic communications content; including data to trace and identify the source and destination of a communication, geographical location and the date, time, duration and the type of communication. Whether such signals and the related data are conveyed by wire, radio, optical or electromagnetic means, including satellite networks, cable networks, fixed (circuit- and packet-switched, including internet) and mobile terrestrial networks, electricity cable systems, the data related to such signals should be considered as electronic communications metadata and therefore be subject to the provisions of this Regulation. Electronic communications metadata may include information that is part of the subscription to the service when such information is processed for the purposes of transmitting, distributing or exchanging electronic communications content.

- (15) Electronic communications data should be treated as confidential. This means that any ~~interference with the transmission~~ **processing** 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.
- (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.

(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, 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.

**(17a) The processing of electronic communications metadata should also be regarded to be permitted where it is necessary in order to protect an interest which is essential for the life of the end-users who are natural persons or that of another natural person. Processing of electronic communications metadata of an end-user for the protection of the vital interest of an end-user who is a natural person should in principle take place only where the protection of such interests cannot be ensured without that processing.**

**(17b) Processing of electronic communication metadata for scientific research or statistical purposes should be considered to be permitted processing. This type of processing should be subject to further safeguards to ensure privacy of the end-users by employing appropriate security measures such as encryption and pseudonymisation. In addition, end-users who are natural persons should be given the right to object.**

(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 **electronic communications** data from internet or voice communication usage will not be valid if the ~~data subject~~ **end-user** has no genuine and free choice, or is unable to refuse or withdraw consent without detriment.

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

**(19a) Services that facilitate end-users everyday life such as index functionality, personal assistant, translation services and services that enable more inclusion for persons with disabilities such as text-to-speech services are emerging. Therefore, processing electronic communications content for services explicitly requested by the end-user for their own individual use, consent should only be requested from the end-user requesting the service taking into account that the processing must be limited to that purpose, limited to the duration necessary for providing the requested services and shall not adversely affect fundamental rights and interest of another end-user concerned.**

(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~~ **processed by** or emitted by or **stored in** 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, **including the privacy of one's communications**, 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.

- (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 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, **authentication session cookies used to verify the identity of end-users engaged in online transactions or cookies used to remember items selected by the end-user and placed in shopping basket.** Cookies can also be a legitimate and useful tool, for example, in **assessing the effectiveness of a delivered information society service, for example by helping to** ~~measuring web traffic~~ **to the numbers of end-users visiting a website, certain pages of a website or the number of end-users of an application. This is not the case, however, regarding cookies and similar identifiers used to determine the nature of who is using the site.** 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. **Consent should not be necessary either when the purpose of using the processing storage capabilities of terminal equipment is to fix security vulnerabilities and other bugs, provided that such updates do not in any way change the functionality of the hardware or software or the privacy settings chosen by the end-user and the end-user has the possibility to postpone or turn off the automatic installation of such updates. Software updates that do not exclusively have a security purpose, for example those intended to add new features to an application or improve its performance, should not fall under this exception.**

- (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.
- (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.

- (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.

(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, **the WiFi signal** 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 **physical movements'** tracking services based on the scanning of equipment related information with diverse functionalities, including people counting, **such as** providing data on the number of people waiting in line, ascertaining the number of people in a specific area, ~~etc~~ **referred to as statistical counting for which the consent of end-users is not needed, provided that such counting is limited in time and space to the extent necessary for this purpose. Providers should also apply appropriate technical and organisations measures to ensure the level of security appropriate to the risks, including pseudonymisation of the data and making it anonymous or erase it as soon it is not longer needed for this purpose. Providers engaged in such practices should display prominent notices located on the edge of the area of coverage informing end-users prior to entering the defined area that the technology is in operation within a given perimeter, the purpose of the tracking, the person responsible for it and the existence of any measure the end-user of the terminal equipment can take to minimize or stop the collection. Additional information should be provided where personal data are collected pursuant to Article 13 of Regulation (EU) 2016/679.** This information may be used for more intrusive purposes, **which should not be considered statistical counting**, 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 as well as~~ the tracking of individuals over time, including repeated visits to specified locations. ~~Providers engaged in such practices should display prominent notices located on the edge of the area of coverage informing end-users prior to entering the defined area that the technology is in operation within a given perimeter, the purpose of the tracking, the person responsible for it and the existence of any measure the end-user of the terminal equipment can take to minimize or stop the collection.~~

Additional information should be provided where personal data are collected pursuant to Article 13 of Regulation (EU) 2016/679.

- (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).

- (27) As regards calling line identification, it is necessary to protect the right of the calling party to withhold the presentation of the identification of the line from which the call is being made and the right of the called party to reject calls from unidentified lines. Certain end-users, in particular help lines, and similar organisations, have an interest in guaranteeing the anonymity of their callers. As regards connected line identification, it is necessary to protect the right and the legitimate interest of the called party to withhold the presentation of the identification of the line to which the calling party is actually connected.
- (28) There is justification for overriding the elimination of calling line identification presentation in specific cases. End-users' rights to privacy with regard to calling line identification should be restricted where this is necessary to trace **malicious or** nuisance calls and with regard to calling line identification and location data where this is necessary to allow emergency services, such as eCall, to carry out their tasks as effectively as possible. **Location information established by the terminal equipment, using its built-in Global Navigation Satellite Systems (GNSS) capabilities may supplement the location data supplied by providers of number-based interpersonal communications services when a call is made to emergency services. The temporary denial or absence of consent of an end-user to access location data provided by the terminal equipment GNSS, for example, because location settings are turned off, shall not prevent the transfer of such information to emergency services for the purposes of facilitating access to such services.**
- (29) Technology exists that enables providers of electronic communications services to limit the reception of ~~unwanted~~ **malicious or nuisance** calls by end-users in different ways, including blocking silent calls and other ~~fraudulent~~ **malicious** and nuisance calls. Providers of ~~publicly available~~ number-based interpersonal communications services should deploy this technology and protect end-users against ~~nuisance~~ **such** calls ~~and~~ free of charge. Providers should ensure that end-users are aware of the existence of such functionalities, for instance, by publicising the fact on their webpage.

- (30) Publicly available directories of end-users of electronic communications services are widely distributed. Publicly available directories means any directory or service containing **categories of end-users information personal data** such as **name**, phone numbers (including mobile phone numbers), email address ~~contact details~~, **home address** 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~~ **able to determine per category of personal data whether their personal data are included in a directory**. The legitimate interest of legal ~~entities~~ **persons** requires that end-users that are legal ~~entities~~ **persons** have the right to object to the data related to them being included in a directory.
- (30a) **For the purposes of the provisions relating to direct marketing communications, electronic message should include e-mail, SMS, MMS and functionally equivalent applications and techniques.**
- (31) ~~If end-users that are natural persons give their consent to their data being included in such directories, they should be able to determine on a consent basis which categories of personal data are included in the directory (for example name, email address, home address, user name, phone number). In addition, p~~Providers of publicly available directories **number-based interpersonal communications services** should inform the end-users **who are natural persons** of the ~~purposes of the directory and of the search functions of the directory and obtain their additional consent before including them in that directory~~ **enabling such search functions related to their personal data**. ~~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.

- (32) In this Regulation, direct marketing **communications** refers to any form of advertising by which a natural or legal person sends **or presents** direct marketing communications directly to one or more identified or identifiable end-users using electronic communications services. **The provisions on direct marketing communications do not apply to any other form of marketing, e.g. displaying advertising to the general public on a website which is not directed to any specific identified or identifiable end-user.** In addition to the offering of products and services for commercial purposes, ~~this should~~ **direct marketing communications** also include messages sent by political parties that contact natural persons via electronic communications services in order to promote their parties. The same ~~should~~ **apply**ies to messages sent by other non-profit organisations to support the purposes of the organisation.
- (33) Safeguards should be provided to protect end-users against ~~unsolicited~~ **direct marketing** communications ~~for direct marketing purposes~~, which intrude into the ~~private life~~ **privacy** 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-users **who are natural persons** is obtained before ~~commercial electronic communications for direct marketing~~ **communications** purposes are sent **or presented** to ~~end-users~~ **them** in order to effectively protect ~~individuals~~ **them** against the intrusion into their private life ~~as well as the legitimate interest of legal persons~~. Legal certainty and the need to ensure that the rules protecting against ~~unsolicited electronic~~ **direct marketing** communications remain future-proof justify the need to define **in principle** a single set of rules that do not vary according to the technology used to convey these ~~unsolicited direct marketing~~ 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 **for electronic message** 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 **for electronic message** in accordance with Regulation (EU) 2016/679.

(3633a) Voice-to-voice direct marketing calls that do not involve the use of automated calling and communication systems, ~~given that they~~ are more costly for the sender and impose no financial costs on end-users. Member States should therefore be able to establish and or maintain national systems only allowing such calls to end-users **who are natural persons and** who have not objected.

(34) When end-users **who are natural persons** have provided their consent to receiving ~~unsolicited direct marketing~~ communications for ~~direct marketing purposes~~, they should still be able to withdraw their consent at any time in an easy manner **and without any cost to them**. To facilitate effective enforcement of Union rules on ~~unsolicited messages for~~ direct marketing **communications**, it is necessary to prohibit the masking of the identity and the use of false identities, false return addresses or numbers while sending **or presenting** ~~unsolicited commercial direct marketing~~ communications for ~~direct marketing purposes~~. ~~Unsolicited Direct~~ marketing communications should therefore be clearly recognizable as such and should indicate the identity of the legal or the natural person ~~transmitting~~ **sending or presenting** the communication or on behalf of whom the communication is ~~transmitted~~ **sent or presented** and provide the necessary information for recipients ~~end-users who are~~ **end-users who are natural persons** to exercise their right to ~~oppose~~ **withdraw their consent** to receiving further ~~written and/or oral marketing messages~~ **direct marketing communications, such as valid contact details (e.g. link, e-mail address) which can be easily used by end-users who are natural persons to withdraw their consent free of charge.**

(35) ~~In order to allow easy withdrawal of consent, legal or natural persons conducting direct marketing communications by email should present a link, or a valid electronic mail address, which can be easily used by end-users to withdraw their consent. Legal or natural persons conducting direct marketing communications through voice-to-voice calls and through calls by automating calling and communication systems should display~~ **present** their identity line on which the company can be called. **Member States are encouraged to introduce by means of national law or present a specific code or prefix identifying the fact that the call is a direct marketing call to improve the tools provided for the end-users in order to protect their privacy in more efficient manner. Using a specific code or prefix should not relieve the legal or natural persons sending or presenting direct marketing call from the obligation to present their calling line identification.**

~~(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.~~

- (38) ~~To ensure full consistency with Regulation (EU) 2016/679, the enforcement of the provisions of this Regulation should be entrusted to the same authorities responsible for the enforcement of the provisions Regulation (EU) 2016/679 and this Regulation relies on the consistency mechanism of Regulation (EU) 2016/679. Member States should be able to have more than one supervisory authority, to reflect their constitutional, organisational and administrative structure. End-users who are legal persons should have the same rights as end-users who are natural persons regarding any supervisory authority entrusted to monitor any provisions of this Regulation. Each supervisory authority should be provided with the additional financial and human resources, premises and infrastructure necessary for the effective performance of the additional tasks designated under this Regulation. The supervisory authorities should also be responsible for monitoring the application of this Regulation regarding electronic communications data for legal entities. Such additional tasks should not jeopardise the ability of the supervisory authority to perform its tasks regarding the protection of personal data under Regulation (EU) 2016/679 and this Regulation. Each supervisory authority should be provided with the additional financial and human resources, premises and infrastructure necessary for the effective performance of the tasks under this Regulation.~~
- (38a) **To ensure consistency with Regulation (EU) 2016/679, the enforcement of the certain provisions of this Regulation should be entrusted to the same authorities responsible for the enforcement of the provisions Regulation (EU) 2016/679, including with regard to end-users who are legal persons.**

- (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.
- (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.

(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 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).

(42) Since the objective of this Regulation, namely to ensure an equivalent level of protection of natural and legal persons and the free flow of electronic communications data throughout the Union, cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(43) Directive 2002/58/EC should be repealed.

HAVE ADOPTED THIS REGULATION:

# CHAPTER I

## GENERAL PROVISIONS

### *Article 1* *Subject matter*

1. This Regulation lays down rules regarding the protection of fundamental rights and freedoms of natural ~~and legal~~ persons in the provision and use of electronic communications services, and in particular, the rights to respect for private life and communications and the protection of natural persons with regard to the processing of personal data.
  - 1a. **This Regulation lays down rules regarding the protection of the fundamental rights and freedoms of legal persons in the provision and use of the electronic communications services, and in particular their rights to respect of communications.**
2. ~~This Regulation ensures~~ **The** free movement of electronic communications data and electronic communications services within the Union, ~~which~~ shall be neither restricted nor prohibited for reasons related to the respect for the private life and communications of natural ~~and legal~~ persons and the protection of natural persons with regard to the processing of personal data, **and for protection of communications of legal persons.**
3. The provisions of this Regulation particularise and complement Regulation (EU) 2016/679 **with regard to the processing of electronic communications data that qualify as personal data** by laying down specific rules for the purposes mentioned in paragraphs 1 ~~and~~ to 2.

*Article 2*  
*Material Scope*

1. This Regulation applies to:
  - (a) the processing of electronic communications ~~content data~~ **in transmission and of electronic communications metadata** carried out in connection with the provision and the use of electronic communications services; ~~and to~~
  - (b) information ~~related to~~ **processed by or emitted by or stored in** the terminal equipment of end-users.
  - (c) **the placing on the market of software permitting electronic communications, including the retrieval and presentation of information on the internet;**
  - (d) **the offering of a publicly available directory of end-users of electronic communications services;**
  - (e) **the sending or presenting direct marketing communications to end-users.**
2. This Regulation does not apply to:
  - (a) activities which fall outside the scope of Union law;
  - (b) activities of the Member States which fall within the scope of Chapter 2 of Title V of the Treaty on European Union;
  - (c) electronic communications services which are not publicly available;
  - (d) activities of competent authorities for the purposes of 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;

3. The processing of electronic communications data by the Union institutions, bodies, offices and agencies is governed by Regulation (EU) 00/0000 [new Regulation replacing Regulation 45/2001].
4. This Regulation shall be without prejudice to the application of Directive 2000/31/EC<sup>9</sup>, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.
5. This Regulation shall be without prejudice to the provisions of Directive 2014/53/EU.

### *Article 3*

#### *Territorial scope and representative*

1. This Regulation applies to:
  - (a) the provision of electronic communications services to end-users **who are** in the Union;  
~~irrespective of whether a payment of the end-user is required;~~
  - (aa) the processing of electronic communications content in transmission and of electronic communications metadata of end-users who are in the Union;**
  - ~~(b) the use of such services;~~
  - (c) the protection of information ~~related to~~ **processed by or emitted by or stored in** the terminal equipment of end-users ~~located~~ **who are** in the Union.
  - (ca) the placing on the Union market of software permitting electronic communications, including the retrieval and presentation of information on the internet;**

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<sup>9</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1–16).

- (cb) **the offering of publicly available directories of end-users of electronic communications services who are in the Union;**
- (cc) **the sending or presenting of direct marketing communications to end-users who are in the Union.**
2. Where the provider of an electronic communications service, **the provider of a publicly available directory or the provider of software enabling electronic communications or a person using electronic communications services to send or present direct marketing communications or makes use of processing and storage capabilities or collects information processed by or emitted by or stored in the end-users' terminal equipment** is not established in the Union it shall designate in writing a representative in the Union.
- 2a. **The requirements laid down in paragraph 2 shall not apply if activities listed in paragraph 1 are occasional and are unlikely to result in a risk to the fundamental rights of end-users taking into account the nature, context, scope and purpose of those activities.**
3. The representative shall be established in one of the Member States where the end-users of such electronic communications services are located.
4. The representative shall ~~have the power to answer questions and provide information~~ **be mandated by the provider or person it represents to be addressed** in addition to or instead of the provider it represents, in particular, to supervisory authorities, and end-users, on all issues related to processing electronic communications data for the purposes of ensuring compliance with this Regulation.

5. The designation of a representative pursuant to paragraph 2 shall be without prejudice to legal actions, which could be initiated against ~~a natural or legal person who processes electronic communications data in connection with the provision of electronic communications services from outside the Union to end users in the Union~~ **the provider or person it represents.**

#### *Article 4*

#### *Definitions*

1. For the purposes of this Regulation, following definitions shall apply:
- (a) the definitions in Regulation (EU) 2016/679;
  - (b) the definitions of ‘electronic communications network’, ‘electronic communications service’, ‘interpersonal communications service’, ‘number-based interpersonal communications service’, ‘number-independent interpersonal communications service’, ‘end-user’ and ‘call’ in ~~points~~ **paragraphs** (1), (4), (5), (6), (7), (14) and (21) respectively of Article 2 of [Directive establishing the European Electronic Communications Code];
  - (c) the definition of 'terminal equipment' in ~~point (1)~~ of Article 1(1) of Commission Directive 2008/63/EC<sup>10</sup>;
  - (d) **the definition of ‘information society service’ in point (b) of Article 1 (1) of Directive (EU) 2015/1535<sup>11</sup>.**

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<sup>10</sup> Commission Directive 2008/63/EC of 20 June 2008 on competition in the markets in telecommunications terminal equipment (OJ L 162, 21.6.2008, p. 20–26).

<sup>11</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1-15).

2. For the purposes of ~~point (b) of paragraph 1~~ **this Regulation**, the definition of ‘interpersonal communications service’ **referred to in point (b) of paragraph 1** shall include services which enable interpersonal and interactive communication merely as a ~~minor~~ ancillary feature that is intrinsically linked to another service.
3. In addition, for the purposes of this Regulation the following definitions shall apply:
- (a) ‘electronic communications data’ means electronic communications content and electronic communications metadata;
  - (b) ‘electronic communications content’ means the content exchanged by means of electronic communications services, such as text, voice, videos, images, and sound;
  - (c) ‘electronic communications metadata’ means data processed ~~in an~~ **by means of** electronic communications ~~network~~ **services** for the purposes of transmitting, distributing or exchanging electronic communications content; including data used to trace and identify the source and destination of a communication, data on the location of the device generated in the context of providing electronic communications services, and the date, time, duration and the type of communication;
  - (d) ‘publicly available directory’ means a directory of end-users of electronic communications services, whether in printed or electronic form, which is published or made available to the public or to a section of the public, including by means of a directory enquiry service;
  - (e) ‘electronic ~~mail~~ **message**’ means any ~~electronic~~ message containing information such as text, voice, video, sound or image sent over an electronic communications network which can be stored in the network or in related computing facilities, or in the terminal equipment of its recipient;

- (f) ‘direct marketing communications’ means any form of advertising, whether written or oral, sent **or presented** to one or more identified or identifiable end-users of electronic communications services, including the use of automated calling and communication systems with or without human interaction, electronic ~~mail~~ **message**, SMS, etc.;
- (g) ‘direct marketing voice-to-voice calls’ means live calls, which do not entail the use of automated calling systems and communication systems;
- (h) ‘automated calling and communication systems’ means systems capable of automatically initiating calls to one or more recipients in accordance with instructions set for that system, and transmitting sounds which are not live speech, including calls made using automated calling and communication systems which connect the called person to an individual.

#### *Article 94a*

##### *Consent*

1. The ~~definition of and conditions~~ **provisions** for consent provided for under ~~Articles 4(11) and 7 of Regulation (EU) 2016/679/EU~~ shall apply **to natural persons and, *mutatis mutandis*, to legal persons.**
- 1a. **Paragraph 1 is without prejudice to national legislation on determining the persons who are authorised to represent a legal person in any dealings with third parties or in legal proceedings.**

2. Without prejudice to paragraph 1, where technically possible and feasible, for the purposes of point (b) of Article 8(1), consent may be expressed by using the appropriate technical settings of a software ~~application enabling access to the internet~~ **placed on the market permitting electronic communications, including the retrieval and presentation of information on the internet.**
  
3. End-users who have consented to the processing of electronic communications data as set out in point (c) of Article 6(2) and points (a) and (b) of Article 6(3) shall ~~be given the possibility to withdraw their consent at any time as set forth under Article 7(3) of Regulation (EU) 2016/679~~ and be reminded of ~~this~~ **the possibility to withdraw their consent** at periodic intervals of **[no longer than 12 months]**, as long as the processing continues, **unless the end-user requests not to receive such reminders.**

## CHAPTER II

### PROTECTION OF ELECTRONIC COMMUNICATIONS OF ~~NATURAL AND LEGAL PERSONS~~ **END-USERS** AND OF ~~INFORMATION STORED IN~~ **THE INTEGRITY OF THEIR** TERMINAL EQUIPMENT

#### *Article 5*

##### *Confidentiality of electronic communications data*

1. Electronic communications data shall be confidential. Any ~~interference with processing of~~ **processing of** electronic communications data, ~~such as by~~ **including** listening, tapping, storing, monitoring, scanning or other kinds of interception; ~~or surveillance or processing of~~ **or** electronic communications data, by persons other than the end-users, shall be prohibited, except when permitted by this Regulation.
  
2. **[Confidentiality of electronic communications data shall apply to the transmission of machine-to-machine electronic communications where carried out via an electronic communications service.]**

#### *Article 6*

##### *Permitted processing of electronic communications data*

1. Providers of electronic communications networks and services ~~may~~ **shall be permitted to** process electronic communications data **only** if:
  - (a) it is necessary to achieve the transmission of the communication, for the duration necessary for that purpose; or

- (b) it is necessary to maintain or restore the security of electronic communications networks and services, or detect technical faults and/or errors **and/or attacks** in the transmission of electronic communications, for the duration necessary for that purpose.
2. **Without prejudice to paragraph 1, Providers of electronic communications networks and services may shall be permitted to process electronic communications metadata only 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>12</sup> for the duration necessary for that purpose; or
- (b) it is necessary for **performance of the contract to which the end-user is party, including** billing, calculating interconnection payments, detecting or stopping fraudulent, or abusive use of, or subscription to, electronic communications services; or
- (ba) it is necessary for compliance with a legal obligation to which the provider is subject; 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; **or**
- (d) it is necessary to protect the vital interest of a natural person where the end-user who is a natural person is physically or legally incapable of giving consent; or**

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<sup>12</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).

**(e) it is necessary for scientific research or statistical purposes provided it is based on Union or Member State law which shall be proportionate to the aim pursued and provide for specific measures, including encryption and pseudonymisation, to safeguard fundamental rights and the interest of the end-users. Processing of electronic communications metadata under this point shall be done in accordance with paragraph 6 of Article 21 and paragraphs 1, 2 and 4 of Article 89 of Regulation (EU) 2016/679.**

3. **Without prejudice to paragraph 1, Providers of the electronic communications networks and services may shall be permitted to process electronic communications content only:**

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

**(aa) for the purpose of the provision of an explicitly requested services by an end-user for purely individual use if the requesting end-user has given consent and where such requested processing does not adversely affect fundamental rights and interest of another end-user concerned and does not exceed the duration necessary for the provision of the requested services and is limited to that purpose only; 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 **prior to the processing carried out an assessment of the impact of the envisaged processing operations on the protection of electronic communications data and** consulted the supervisory authority. ~~Points (2) and (3) of Article 36(2) and (3) of Regulation (EU) 2016/679~~ shall apply to the consultation of the supervisory authority.

**4. A third party on behalf of a provider of electronic communications network or services shall be permitted to process electronic communications data in accordance with paragraphs 1 to 3 provided that conditions laid down in Article 28 of Regulation (EU) 2016/679 are met.**

*Article 7*

*Storage and erasure of electronic communications data*

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

Article 8

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

1. The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the end-user concerned shall be prohibited, except on the following grounds:
  - (a) it is necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or
  - (b) the end-user has given his or her consent; or
  - (c) it is necessary for providing an information society service requested by the end-user; or
  - (d) ~~if it is necessary for web-audience measuring~~, provided that such measurement is carried out by the provider of the information society service requested by the end-user **or by a third party on behalf of the provider of the information society service provided that conditions laid down in Article 28 of Regulation (EU) 2016/679 are met;** or
  - (e) **it is necessary for a security update provided that:**
    - (i) security updates are necessary and do not in any way change the privacy settings chosen by the end-user are not changed in any way,**
    - (ii) the end-user is informed in advance each time an update is being installed, and**
    - (iii) the end-user is given the possibility to postpone or turn off the automatic installation of these updates;** or
  - (f) **it is necessary to locate, at the time of the incident, a caller of an emergency call from the terminal by organisations dealing with emergency communications.**

2. The collection of information emitted by terminal equipment **of the end-user** to enable it to connect to another device and, or to network equipment shall be prohibited, except ~~if~~ **on the following grounds:**
- (a) it is done exclusively in order to, for the time necessary for, and for the purpose of establishing a connection; or
  - (b) **the end-user has given his or her consent; or**
  - (c) **it is necessary for the purpose of statistical counting that is limited in time and space to the extent necessary for this purpose and the data is made anonymous or erased as soon as it is no longer needed for this purpose.**
- ~~(b)~~**2a.** **For the purpose of paragraph 2 points (b) and (c),** a clear and prominent notice ~~is~~ **shall** be 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.
- 2b.** **For the purpose of paragraph 2 points (b) and (c),** ~~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.
3. The information to be provided pursuant to ~~point (b) of~~ paragraph 2a may be provided in combination with standardized icons in order to give a meaningful overview of the collection in an easily visible, intelligible and clearly legible manner.
4. [The Commission shall be empowered to adopt delegated acts in accordance with Article 257 determining the information to be presented by the standardized icon and the procedures for providing standardized icons.]

## *Article 9*

### *Consent*

- ~~1. The definition of and conditions for consent provided for under Articles 4(11) and 7 of Regulation (EU) 2016/679/EU shall apply.~~
- ~~2. Without prejudice to paragraph 1, where technically possible and feasible, for the purposes of point (b) of Article 8(1), consent may be expressed by using the appropriate technical settings of a software application enabling access to the internet.~~
- ~~3. End users who have consented to the processing of electronic communications data as set out in point (c) of Article 6(2) and points (a) and (b) of Article 6(3) shall be given the possibility to withdraw their consent at any time as set forth under Article 7(3) of Regulation (EU) 2016/679 and be reminded of this possibility at periodic intervals of 6 months, as long as the processing continues.~~

## *Article 10*

### *Information and options for privacy settings to be provided*

1. Software placed on the market permitting electronic communications, including the retrieval and presentation of information on the internet, shall offer the option to prevent ~~third~~ **any other parties than the end-user** from storing information on the terminal equipment of an end-user or processing information already stored on that equipment.
2. Upon installation **or first usage**, the software **referred to in paragraph 1** shall inform the end-user about the privacy settings options and, to continue with the installation **or usage**, require the end-user to consent to a setting.

- 2a. The software referred to in paragraph 1 shall provide in a clear manner easy ways for end-users to change the privacy setting consented to under paragraph 2 at any time during the use.**
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].

### *Article 11*

#### *Restrictions*

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

# CHAPTER III

## ~~NATURAL AND LEGAL PERSONS~~ END-USERS' RIGHTS TO CONTROL ELECTRONIC COMMUNICATIONS

### *Article 12*

#### *Presentation and restriction of calling and connected line identification*

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:
  - (a) the calling end-user with the possibility of preventing the presentation of the calling line identification on a per call, per connection or permanent basis;
  - (b) the called end-user with the possibility of preventing the presentation of the calling line identification of incoming calls;
  - (c) the called end-user with the possibility of rejecting incoming calls where the presentation of the calling line identification has been prevented by the calling end-user;
  - (d) the called end-user with the possibility of preventing the presentation of the connected line identification to **which** the calling end-user **is connected**.
2. The possibilities referred to in ~~points (a), (b), (c) and (d)~~ of paragraph 1 shall be provided to end-users by simple means and free of charge.

3. Point (a) of paragraph 1 shall also apply with regard to calls to third countries originating in the Union. Points (b), (c) and (d) of paragraph 1 shall also apply to incoming calls originating in third countries.
4. Where presentation of calling or connected line identification is offered, providers of publicly available number-based interpersonal communications services shall provide information to the public regarding the options set out in ~~points (a), (b), (c) and (d)~~ of paragraph 1.

### *Article 13*

#### *Exceptions to ~~presentation and restriction of calling and connected line identification~~ provide access to emergency services*

1. Regardless of whether the calling end-user has prevented the presentation of the calling line identification, where a call is made to emergency services, providers of ~~publicly available~~ number-based interpersonal communications services shall override the elimination of the presentation of the calling line identification and the denial or absence of consent of an end-user for the processing of metadata, on a per-line basis for organisations dealing with emergency communications, including public safety answering points, for the purpose of responding to such communications.
2. Member States shall establish more specific provisions with regard to the establishment of **transparent** procedures and the circumstances where providers of ~~publicly available~~ number-based interpersonal communication services shall override the elimination of the presentation of the calling line identification on a temporary basis, where end-users request the tracing of malicious or nuisance calls.

3. **Regardless of whether the end-user has prevented access to the terminal equipment's Global Navigation Satellite Systems (GNSS) capabilities through the terminal equipment settings, when a call is made to emergency services, such settings may not prevent access to GNSS data to determine and provide the caller location to emergency services for the purpose of responding to such calls.**

*Article 14*

*Incoming call blocking*

Providers of ~~publicly available~~ number-based interpersonal communications services shall deploy state of the art measures to limit the reception of ~~unwanted~~ **malicious or nuisance** calls by end-users and shall also provide the called end-user with the following possibilities, free of charge:

to block incoming calls from specific numbers or from anonymous sources **or from numbers using a specific code or prefix referred to in Article 16(3a);**

- (c) to stop automatic call forwarding by a third party to the end-user's terminal equipment.

*Article 15*

*Publicly available directories*

1. The providers of ~~publicly available directories~~ **number-based interpersonal communications services** shall ~~obtain the consent of~~ **give** 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~~ **the opportunity to determine per category of personal data whether their personal data are included in the publicly available directory**, to the extent that such data are relevant for the purpose of the directory as determined by the provider of the directory.

- 1a. **The Pproviders of number-based interpersonal communications services** shall give end-users who are natural persons the means to verify, correct and delete ~~such~~ data **included in a publicly available directory.**
2. The providers of a ~~publicly available directory~~ **number-based interpersonal communications services** 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 **the additional consent of** end-users' ~~consent~~ before enabling such search functions related to their own data.
3. The providers of ~~publicly available directories~~ **number-based interpersonal communications services** shall provide end-users that are legal persons with the possibility to object to data related to them being included in the directory.
- 3a. **The Pproviders of number-based interpersonal communications services** shall give ~~such~~ end-users that are legal persons the means to verify, correct and delete ~~such~~ data **included in a publicly available directory.**
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.

Article 16

*Unsolicited Direct marketing communications*

1. Natural or legal persons may use electronic communications services for the purposes of [sending **or presenting**] direct marketing communications to end-users who are natural persons that have given their consent.
2. Where a natural or legal person obtains ~~electronic~~ contact details for electronic ~~mail~~ **message** from ~~its customer~~ **end-users who are natural persons**, 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~~ **such end-users** 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~~ **such direct marketing communication** is [sent **or presented**].
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~~ **calling line identification** on which they can be contacted; ~~or.~~
  - ~~(b)~~**3a. Member States may require natural or legal person using electronic communications services for the purposes of placing direct marketing calls to present a specific code/or prefix identifying the fact that the call is a direct marketing call in addition to the obligation set out in paragraph 3. Member State requiring the use of such a specific code or prefix shall make it available for the natural or legal persons who use electronic communications services for the purposes of direct marketing calls.**

4. Notwithstanding paragraph 1, Member States may provide by law that the placing of direct marketing voice-to-voice calls to end-users who are natural persons shall only be allowed in respect of end-users who are natural persons who have not expressed their objection to receiving those communications.
5. Member States shall ensure, in the framework of Union law and applicable national law, that the legitimate interest of end-users that are legal persons with regard to ~~unsolicited~~ **direct marketing** communications [sent or presented] by means set forth under paragraph 1 are sufficiently protected.
6. Any natural or legal person using electronic communications services to ~~transmit~~ [send or present] direct marketing communications shall inform end-users of the marketing nature of the communication and the identity of the legal or natural person on behalf of whom the **direct marketing** communication is ~~transmitted~~ [sent or presented] and shall provide the necessary information for ~~recipients~~ **end-users who are natural persons** to exercise their right to withdraw their consent, in an easy manner **and free of charge**, to receiving further **direct** marketing communications.
7. ~~[The Commission shall be empowered to adopt implementing measures in accordance with Article 26(2) specifying the code/or prefix to identify marketing calls, pursuant to point (b) of paragraph 3.]~~

#### *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.~~

## **CHAPTER IV**

# **INDEPENDENT SUPERVISORY AUTHORITIES AND ENFORCEMENT**

### *Article 18*

#### *Independent supervisory authorities*

- 0. Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Regulation (‘supervisory authorities’), in accordance with paragraphs 1 and 1a of this Article.**
1. The independent supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be responsible for monitoring the application of **Chapter II** of this Regulation. **Without prejudice to article 19**, Chapters 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.
- 1a. Member States shall entrust the monitoring of the application of Chapter III of this Regulation to the supervisory authorities referred to in paragraph 1 of this Article or to other supervisory authorities having the appropriate expertise and independence.**
- 1b. Where more than one supervisory authority is responsible for monitoring the application of this Regulation in a Member State, such authorities shall cooperate with each other.**
2. The supervisory ~~authority~~ or authorities referred to in paragraphs 1 **and 1a** shall cooperate whenever appropriate with national regulatory authorities established pursuant to the [Directive Establishing the European Electronic Communications Code].

*Article 19*

*European Data Protection Board*

1. The European Data Protection Board, established under Article 68 of Regulation (EU) 2016/679, shall have competence to ensure the consistent application of **Chapter II** of this Regulation. ~~To that end, the European Data Protection Board shall exercise the tasks laid down in Article 70 of Regulation (EU) 2016/679.~~
2. **For the purposes of this Regulation,** ~~the~~ Board shall ~~also~~ have the following tasks:
  - (a) advise the Commission on any proposed amendment of this Regulation;
  - (b) examine, on its own initiative, on request of one of its members or on request of the Commission, any question covering the application of this Regulation **in relation to Chapter II** and issue guidelines, recommendations and best practices in order to encourage consistent application of this Regulation;
  - (c) **draw up guidelines for supervisory authorities referred to in paragraph 1 of Article 18 in relation to their powers as laid down in Article 58 of Regulation (EU) 2016/679 and setting of administrative fines pursuant to Article 23 of this Regulation;**
  - (d) **issue guidelines, recommendations and best practices in accordance with point (b) of this paragraph for establishing common procedures for reporting by end-users of infringements of this Regulation regarding rules laid down in paragraph 2 of Article 54 of Regulation (EU) 2016/679;**
  - (e) **[provide the Commission with an opinion on the icons referred to in paragraph 3 of Article 8];**
  - (f) **promote the cooperation and effective bilateral and multilateral exchange of information and best practices between the supervisory authorities referred to in paragraph 1 of Article 18;**

- (g) promote common training programmes and facilitate personnel exchanges between the supervisory authorities referred to in paragraph 1 of Article 18 and, where appropriate, with the supervisory authorities of third countries or with international organisations;**
  - (h) promote the exchange of knowledge and documentation on legislation on protection of electronic communications of end-users and of the integrity of their terminal equipment as laid down in Chapter II and practice relevant supervisory authorities world wide;**
  - (i) maintain a publicly accessible electronic register of decisions taken by supervisory authorities referred to in paragraph 1 of Article 18 and courts on issues handled in the consistency mechanism.**
- 3. Where the Commission requests advice from the Board, it may indicate a time limit, taking into account the urgency of the matter.**
  - 4. The Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and make them public.**
  - 5. The Board shall, where appropriate, consult interested parties and give them the opportunity to comment within a reasonable period. The Board shall, without prejudice to Article 76 of Regulation (EU) 2016/679, make the result of the consultation procedures publicly available.**

*Article 20*

*Cooperation and consistency procedures*

1. Each supervisory authority shall contribute to the consistent application of this Regulation throughout the Union **and cooperate with each other and with the Commission**.
  
2. For ~~this the~~ purpose **laid down in paragraph 1 and without prejudice to article 19**, the supervisory authorities **designated in accordance with Article 18(1)** shall cooperate with each other and the Commission in accordance with Chapter VII of Regulation (EU) 2016/679 regarding the matters covered by **Chapter II** of this Regulation.

## **CHAPTER V**

### **REMEDIES, LIABILITY AND PENALTIES**

*Article 21*

*Remedies*

1. Without prejudice to any other administrative or judicial remedy, every end-user of electronic communications services shall have the same remedies provided for in Articles 77, 78, and 79 of Regulation (EU) 2016/679.
  - 1a. **End-users who are natural persons shall also have the right to representation provided for in Article 80 of Regulation (EU) 2016/679.**
  
2. Any natural or legal person other than end-users adversely affected by 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.

## Article 22

### *Right to compensation and liability*

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.

## Article 23

### *General conditions for imposing administrative fines*

1. For the purpose of this Article, Chapter VIII of Regulation (EU) 2016/679 shall apply to infringements of this Regulation.
2. Infringements of the following provisions of this Regulation shall, in accordance with paragraph 1, be subject to administrative fines up to EUR 10 000 000, or in the case of an undertaking, up to 2 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:
  - (a) the obligations of any legal or natural person who process electronic communications data pursuant to Article 8;
  - (b) the obligations of the provider of software enabling electronic communications, pursuant to Article 10;
  - (c) the obligations of the providers of publicly available directories pursuant to Article 15;
  - (d) the obligations of any legal or natural person who uses electronic communications services pursuant to Article 16.

3. Infringements of the principle of confidentiality of communications, permitted processing of electronic communications data, time limits for erasure pursuant to Articles 5, 6, and 7 shall, in accordance with paragraph 1 of this Article, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.
4. Member States shall lay down the rules on penalties for infringements of Articles 12, 13, **and 14,** ~~and 17~~.
5. Non-compliance with an order by a supervisory authority as referred to in Article 18, shall be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.
6. Without prejudice to the corrective powers of supervisory authorities pursuant to Article 18, each Member State may lay down rules on whether and to what extent administrative fines may be imposed on public authorities and bodies established in that Member State.
7. The exercise by the supervisory authority of its powers under this Article shall be subject to appropriate procedural safeguards in accordance with Union and Member State law, including effective judicial remedy and due process.
8. Where the legal system of the Member State does not provide for administrative fines, this Article may be applied in such a manner that the fine is initiated by the competent supervisory authority and imposed by competent national courts, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative fines imposed by supervisory authorities. In any event, the fines imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by [xxx] and, without delay, any subsequent amendment law or amendment affecting them.

*Article 24*

*Penalties*

1. Member States shall lay down the rules on other penalties applicable to infringements of this Regulation in particular for infringements which are not subject to administrative fines pursuant to Article 23, and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.
2. Each Member State shall notify to the Commission the provisions of its law which it adopts pursuant to paragraph 1, no later than 18 months after the date set forth under Article 29(2) and, without delay, any subsequent amendment affecting them.

## **CHAPTER VI**

### **DELEGATED ACTS AND IMPLEMENTING ACTS**

*Article 25*

*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.

*Article 26*  
*Committee*

1. The Commission shall be assisted by the Communications Committee established under Article 110 of the [Directive establishing the European Electronic Communications Code]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011<sup>13</sup>.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

**CHAPTER VII**  
**FINAL PROVISIONS**

*Article 27*  
*Repeal*

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

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<sup>13</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13–18).

*Article 28*

*Monitoring and evaluation clause*

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

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

*Article 29*

*Entry into force and application*

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*