



FACTSHEET - ePRIVACY REGULATION PROPOSAL

The essentials

WHAT

The ePrivacy Regulation, once adopted, will **replace the ePrivacy Directive**, last amended in 2009.

The ePrivacy Regulation will apply **in addition to the GDPR**.

The ePrivacy includes rules to ensure that electronic communications respect a high level of data protection and of privacy, regardless of the technology used.

It is an important piece of legislation which provides the rules for cookies, tracking and direct marketing in complementarity with GDPR.

WHO

The ePrivacy Regulation is currently being negotiated at European level.

The adopted text will be the result of a compromise between the **European Commission** (who prepared the legislative proposal), the **European Parliament** and the **Council of the European Union**, representing national governments.

WHEN

The proposal for the ePrivacy Regulation was published in January 2017. The European Parliament defined its position in September 2017.

It is now in the hand of the Council, where member States have to define a common position, prior to enter negotiations with the 2 other institution.

The ePrivacy Regulation is unlikely to be adopted before **Q2 2020**. Once adopted, a **transition period** will allow the industry time to implement the new rules.

WHY

After the adoption of the GDPR, the European Commission started the review of the ePrivacy with the aim to ensure the consistency between the two legislations.

Learn more about the ePrivacy Regulation and FEDMA's work in this factsheet

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ePRIVACY REGULATION: AN INTRODUCTION



The e-Privacy Regulation is a specialised text (Lex Specialis) which is intended to **particularise the GDPR** for the electronic communication sector. In addition, the ePrivacy Regulation **complements the GDPR** with provisions going beyond the scope of GDPR.

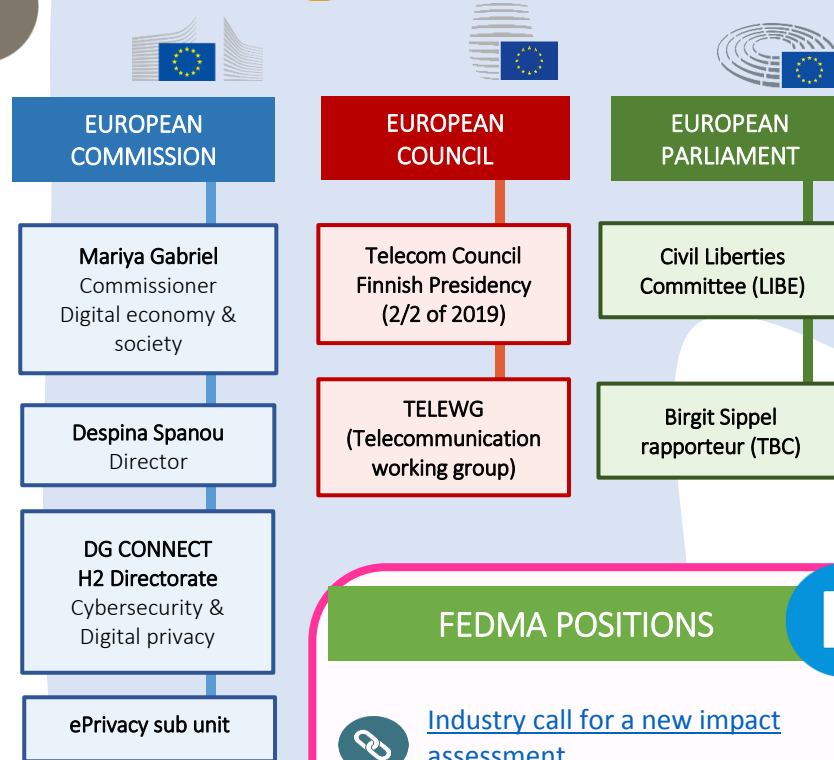
The primary purpose of the ePrivacy is to protection the **confidentiality of electronic communications**. The text also looks at **confidentiality of electronic devices** by regulating cookies and other tracking technologies.

The e-Privacy Regulation also governs the **opt-in/out** and **soft opt-in** rules for direct marketing and proposes a definition of direct marketing.

Finally, the text also includes some provisions for the telecom sector.



WHO IS IN CHARGE ?



FEDMA POSITIONS



[Industry call for a new impact assessment](#)



[FEDMA letter on Direct Marketing](#)



[Industry letter on access to ad funded content](#)

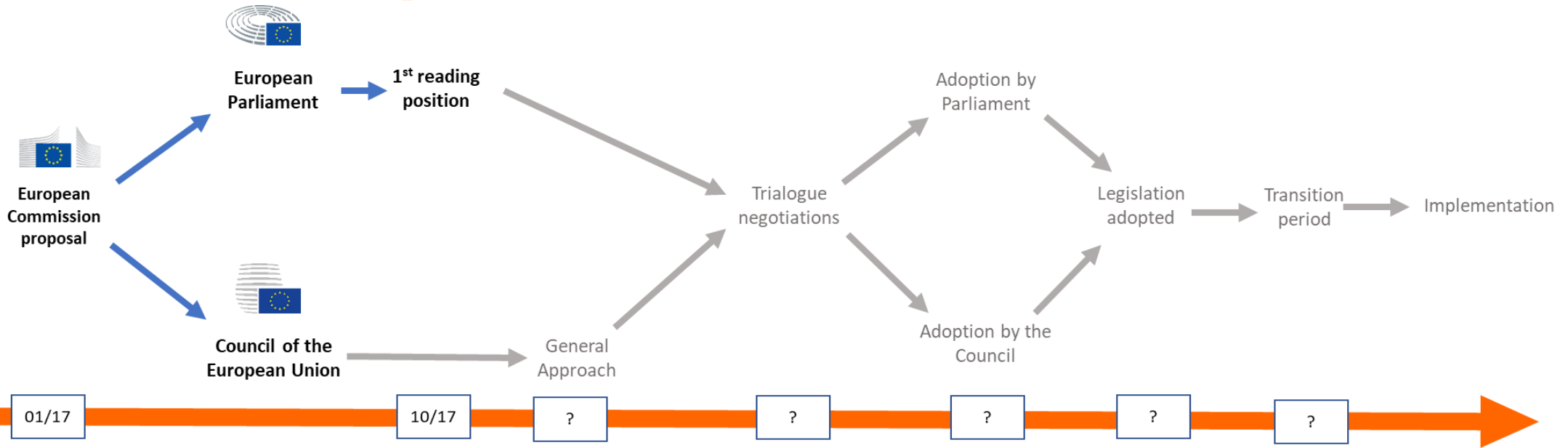


WHAT IS IN THE REGULATION

- Articles 1 - 4 Scope and definitions
- Articles 5 - 7 Confidentiality of electronic communication and permitted data processing
- Article 8 Confidentiality of terminal equipment/device
- Article 9 Consent
- Article 10 Privacy settings
- Articles 12 - 15 Presentation, restriction and blocking of calls & directories
- Article 16 Direct marketing
- Article 17 Security
- Articles 18 - 20 Supervisory authorities and enforcement
- Articles 21 - 24 Remedies, liability and penalties
- Articles 25 - 29 Delegated and implementing acts, final provisions

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WHERE ARE WE IN THE PROCESS?



CHALLENGES FOR OUR INDUSTRY

The ePrivacy Regulation proposal brings a number of challenges for our industry. Its strong focus on (GDPR) consent leaves very little space to the risk based approach which is central to the GDPR, such as through the promotion of pseudonymisation.

Discussions on the definition of direct marketing could lead to a broad definition which includes display online advertising, which would lead to all provisions regulating direct marketing to also apply to this type of advertising. The text is also considering requiring consent for any telemarketing call placed using a predictive dialler.

The discussions on online tracking and privacy settings will need to find the right balance between providing user with control over their privacy, while allowing online services to be add funded thus being offered at limited to no costs for the user and avoiding to place specific online actors in positions of control over the entire internet ecosystem.



KEY PROVISIONS: WHAT ARE THE DIFFERENT POSITIONS?

Article	Commission's proposal	The European Parliament position	What's the Council TELEWG latest discussion	What FEDMA thinks
Article 8: protection of information stored in end-user's terminal equipment	<p>Access and processing of data on user's device is prohibited, unless:</p> <ul style="list-style-type: none"> - The user has consented (GDPR consent) - It is necessary for the transmission of the communication - It is necessary to provide the requested information society service - It is necessary for web audience measurement carried by the information society service itself 	<p>Has restricted some of the exceptions proposed by the Commission:</p> <ul style="list-style-type: none"> - The user has given explicit consent - Strictly necessary for the transmission of the communication <p>Has broaden the exception for web audience to third parties under strict conditions (specific purpose, aggregation of data).</p> <p>Has added an exception when necessary to ensure security, confidentiality, integrity, availability and authenticity of the device under certain conditions.</p> <p>User cannot be denied access to content/service on the ground that consent was not given.</p>	<p>The article is still open for discussion. The current wording suggests broadening some of the exceptions:</p> <ul style="list-style-type: none"> - It is necessary to provide a service requested by the end user. (not just information society services) <p>Has broaden the exception for web audience to third parties acting as a data processor.</p> <p>Has added exceptions for security purposes, fraud prevention or technical fault detection, as well as for software updates under certain conditions.</p> <p>TELEWG is discussing possibility to condition access to content under certain specific conditions (recitals 20 & 21)</p>	<p>The text introduces some welcomed exceptions for processing data without consent. However, the general focus on (GDPR) consent is likely to have strong impact on user's experience (consent fatigue). The general approach of the article could be rethought more in line with the risk-based approach of the GDPR.</p> <p>Publisher/online service which provide wholly/partially add funded services should determine the conditions under which services can be accessed.</p>
Article 10: privacy settings	<p>Browsers (and other software enabling internet access) should have privacy settings to prevent third parties from accessing the user's device.</p>	<p>Parliament consider that such settings should be activated by default and be granular. In addition, browser/software should send a binding Do Not Track signal</p> <p>However, Consent given directly to a website prevail over privacy settings of the browser/software.</p>	<p>This article is still open for discussion. The current wording suggestion is a full deletion of article 10. However, not all member states support this deletion.</p>	<p>GDPR already provide user with control over access to their data, while this article would create imbalance in the market by placing specific service providers in the powerful position of gatekeeper.</p>



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Article	What the Commission proposed	The European Parliament position	What's the Council TELEWG latest discussion	What FEDMA thinks
Article 16 : unsolicited communication/ Direct marketing	<u>General rule:</u> BtoC direct marketing through electronic communications services requires consent.	<u>General rule:</u> BtoC direct marketing through electronic communications services (broad definition, including presented communication) requires prior consent.	The entire article 16 is still open for discussion. <u>General rule:</u> BtoC direct marketing through electronic communications services requires consent.	FEDMA is very concerned by the suggestion from the Council to have the possibility at national level to define a set period of time for the use of the soft opt-in. Similarly, FEDMA is concerned by the proposal to have a common prefix number for telemarketing call. FEDMA welcomes the flexibility for BtoB direct marketing, and calls for further clarification of the scope of that provision to ensure it is not limited to generic contact details (info@company.com)
	<u>Exceptions:</u> Soft opt-in if: - contact details have been obtained in the context of a sale - direct marketing of own similar product and services - customer clearly and distinctly given opportunity to opt-out Voice to voice calls/ telemarketing: Member States can choose between opt-in and opt-out at national level	<u>Exceptions:</u> Soft opt-in if: - contact details have been obtained in the context of a sale - direct marketing of own similar product and services - customer clearly and distinctly given opportunity to opt-out Voice to voice calls/ telemarketing: Member States can choose between opt-in and opt-out at national level. In case of opt-out, Member States must provide for a do not call register.	<u>Exceptions:</u> Soft opt-in if: - contact details have been obtained in the context of a purchase - direct marketing of own similar product and services - customer clearly and distinctly given opportunity to opt-out - Member States may impose a time limit on the use of the soft opt-in Voice to voice calls/ telemarketing: Member States can choose between opt-in and opt-out at national level	
	Telemarketing calls shall present the identity of a line of a specific prefix identifying the call as a marketing call	Telemarketing calls shall present the identity of a line or a specific code/prefix identifying the call as a marketing call	Telemarketing calls shall present the identity of a line. In addition, Member States may impose specific code/prefix identifying the call as a marketing call	
	BtoB direct marketing through electronic communications services to be regulated by Member States	BtoB direct marketing through electronic communications services to be regulated by Member States	BtoB direct marketing through electronic communications services to be regulated by Member States	