

The updated ePrivacy regulation: What to expect and how to prepare



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GENERAL BACKGROUND

- What?
- Why?
- When?

CONTENT

- Scope
- Processing of electronic communications data
- Cookies and devices information tracking
- Unsolicited and direct marketing communications
- Enforcement
- Conclusion

What?

- Right to respect for private and family life, home and communications
- Regulation >< Directive
- Lex Specialis

Why?

- New technologies
- Reinforce
- Align
- Harmonize

When?

- Status of the draft – last updated in March 2019
- Transition period of 24 months from the date of entry into force of the Regulation

Personal scope

- All e-comms providers
- Public directory providers
- Direct marketers
- Anyone using tracking technologies

Material scope

- Electronic communications content + metadata
- End-users' terminal equipment
- The sending of direct marketing communications

Territorial scope

- e-Privacy Regulation protects end-users in the EU

Electronic comms data = confidential

- Any interference with electronic communications data by anyone other than the end-user is prohibited unless ePR expressly allows it
- Prohibition for businesses to intercept communications on their own network, unless e-Privacy Regulation allows it

Permitted processing of all comms data

Achieve transmission of e-comms

Maintain/restore security of e-comms
networks and services

Detect or prevent security risks and/or
attacks on end-users' devices

Detect and delete child pornography

Additional grounds for the use of electronic comms metadata

- **For specific purposes**
 - Network management/optimization
 - Billing & calculating interconnection purposes
 - Detect or stop fraudulent or abusive use of electronic communication services
 - Protect the vital interest of a natural person
 - Statistical or scientific research purposes
- **End user's consent**

Additional grounds for the use of e-comms content

- To provide an explicitly requested service by an end-user for purely individual use, **with the end-user's consent** and where such processing does not adversely affect rights and interests of others; or
- **With the consent of all concerned end-users** for purposes that cannot be fulfilled with anonymous data and provided that a data protection assessment has been carried out and the supervisory authority has been consulted.

Any storage of or access to information already stored on an end user's device is prohibited except where:

- **Necessary:**
 - For the transmission of a communication
 - To provide a service requested by the end user
 - For audience measurement
 - To maintain/restore the security of information society services, prevent fraud or detect technical faults
 - For software update for security purposes
 - To locate terminal equipment following an emergency communication by the end user
- Or **End-user has consented**

Collection of information emitted by terminal equipment is forbidden unless:

- It is necessary for establishing/maintaining a connection
- The end-user has consented
- It is necessary for statistical counting purposes

Grounds for sending electr. marketing:

- Natural persons >< legal entities
- Direct marketing is prohibited without the end-user's consent
- “Existing customer” exception for email marketing
- Possibility to withdraw consent at any time, easily and at no cost

Content requirements

- Direct marketing communications sent to end users must :
 - be identified as such
 - Identify the entity on behalf of which it is sent
 - Identify the sender (including return addresses/numbers)
 - Include means to object or withdraw consent to receive further marketing communications

Supervisory authority(ies)

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
- Up to **EUR 20 000 000**, or in the case of an undertaking, up to **4 % of the total worldwide annual turnover** of the preceding financial year, whichever is higher

What to expect?

- Extension of the scope of e-privacy rules
- Limitation of electronic communications data processing to specific conditions
- New rules on the use of cookies and tracking devices and, on direct marketing

How to prepare?

- Follow the adoption status of the ePrivacy Regulation
- Monitor future developments and identify what is applicable to your practice
- Develop and adapt new policies/guidelines

Questions?



Thank you very much!

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