



Brussels, 16 October 2017  
(OR. en)

13217/17

---

---

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

---

---

**TELECOM 236  
COMPET 671  
MI 713  
DATAPROTECT 158  
CONSOM 319  
JAI 908  
DIGIT 209  
FREMP 114  
CYBER 149  
CODEC 1595**

**NOTE**

---

|       |             |
|-------|-------------|
| From: | Presidency  |
| To:   | Delegations |

---

|                 |  |
|-----------------|--|
| No. prev. doc.: | 11995/17 TELECOM 200 COMPET 591 MI 612 DATAPROTECT 136<br>CONSOM 297 JAI 770 DIGIT 185 FREMP 92 CYBER 122 CODEC 1354 |
| No. Cion doc.:  | 6967/17 TELECOM 53 COMPET 159 MI 184 DATAPROTECT 23<br>CONSOM 67 JAI 192 DIGIT 37 FREMP 22 CYBER 29 IA 34 CODEC 319  |

---

|          |   |
|----------|---|
| Subject: | Proposal for a Regulation of the European Parliament and of the Council<br>concerning the respect for private life and the protection of personal data in<br>electronic communications and repealing Directive 2002/58/EC (Regulation<br>on Privacy and Electronic Communications)<br><br>- Examination of the Presidency text (Articles 12 to 20 and related recitals) |
|----------|---|

---

**I. INTRODUCTION**

1. For the purposes of the **WP TELE meeting of 25 October**, delegations will find in Annex a revised text of the ePrivacy proposal (ePR), focusing on **Articles 12 to 20 and the related recitals**. The revisions are based on the discussions held in the WP TELE and on the written comments provided by delegations, and are without prejudice to any comments delegations might wish to make in the future, also bearing in mind that most delegations are still analysing the proposal.

2. For ease of reference, the latest changes to the text are underlined while the amendments to the Commission proposal are marked in **bold** and deletions in ~~strikethrough~~. Some textual parts in the recitals have been marked with square brackets as they concern parts of those recitals, which are not relevant for the discussion on 25 October. Recitals relating to definitions have not been included in this text as they will be discussed together with Article 4 on 18 October.
3. Delegations will find below an overview of all amendments introduced in the document.

## **II. END-USERS' RIGHTS TO CONTROL ELECTRONIC COMMUNICATIONS**

4. The **heading of Chapter III** has been streamlined.
5. **Throughout the text** the phrase 'publicly available' has been deleted for consistency purposes as services which are not publicly available are excluded from the scope already in art. 2(2)(c).

### **Exceptions to presentation and restriction of CLI**

6. New **art. 13(3) has** been introduced with regard to the access by emergency services to terminal equipment's Global Navigation Satellite Systems (GNSS) data. Corresponding explanatory text has been included in **recital 28** and the **heading of the article** has been aligned with the text.

### **Incoming call blocking**

7. In **art. 14(a)** the Presidency has included an obligation for providers of number-based interpersonal communications services to provide for a possibility to block marketing calls from numbers using specific codes or prefixes in case a Member State decides to require the use of such codes or prefixes (see new Art. 16(3a)). Minor changes have been made in the corresponding **recital 29** for consistency purposes.

### **Publicly available directories**

8. **Art. 15** has been amended so that the obligations provided for in this article are addressed to providers of number-based interpersonal communications services instead of providers of directories as they should have easier access to the end-user. This also seems to be in line with the approach taken in the European Electronic Communications Code, which in Annex VII bis part B II also refers to providers of number-based interpersonal communications services. The Presidency will invite delegations to express their views on this approach, taking into account different obligations provided for in article 15. Corresponding **recitals 30 and 31** have been aligned with the article.

### **Direct marketing communications**

9. In **art. 16(2)** minor changes have been introduced for consistency purposes.
10. Considering the issues raised by delegations during previous discussion on **art. 16(3) and (7)**, the Presidency has proposed to provide that presenting of the calling line identification by persons making direct marketing calls shall be mandatory. In addition, according to new **art. 16(3a)**, if Member States so wish, they can require by national law that persons making direct marketing calls use specific codes or prefixes. Art. 16(3a) further provides that in such a case, Member States shall make such codes or prefixes available for the purposes of direct marketing calls, which removes the need for an implementing act by the Commission. **Art. 16(7)** has therefore been deleted. This has been accompanied by changes in **recital 35**.
11. **Art. 16(6)** has been aligned with the rest of the article and it has been specified that end-users shall be able to withdraw their consent to receiving further direct marketing communications free of charge.
12. **Recitals 33, 33a (former 36) and 34** have been aligned with the text of article 16.

### III. SUPERVISORY AUTHORITIES

13. The Presidency has worked further on improving the provisions on supervisory authorities. On 25 October, the Presidency would like delegations to express their views on the proposed changes and to provide further suggestions in this context, in particular on the cooperation mechanism and on the role of the EDPB. The changes in Chapter IV include the following:
14. A small amendment in art. **18(1) and 20** has been introduced to complement changes made in art. 19.
15. In **art. 18(1a)** it has been specified that supervisory authorities responsible for monitoring of the application of Chapter III should have the appropriate expertise and independence. Delegations are invited to comment whether this amendment addresses their concerns.
16. **Recitals 38 and 39** have been amended and new **recital 38(a)** created to provide details on the designation of supervisory authorities monitoring the application of the ePR. Last sentence of **recital 3** has been deleted in order to avoid duplication with recital 38.
17. It has been suggested that **art. 18(2)** also includes a requirement for authorities responsible for the enforcement of the ePR to cooperate with authorities responsible for the enforcement of Directive 2005/29 on unfair business-to-consumer practices. In Presidency's view such an amendment is not necessary given that such requirement stems from art. 1, 3(a) and point 17 of Annex of Regulation 2006/2004 on consumer protection cooperation<sup>1</sup> (to be soon replaced by a new Regulation).

---

<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004R2006-20130708&from=EN>

18. The Presidency has analysed art. 70 of the GDPR on the tasks of the EDPB referred to in art. 19 of the proposal and has come to the conclusion that a number of tasks listed in that article are not relevant for the ePR purposes. The Presidency has therefore deleted the reference to art. 70 as such and listed the relevant tasks **in art. 19(2)** and included new **art. 19(3), (4) and (5)** corresponding to similar provisions of art. 70 of the GDPR. Delegations are invited to analyse the proposed tasks and indicate their views in this respect.
19. It has been clarified in **art. 20** that the general obligation to cooperate applies to all supervisory authorities (**art. 20(1)**), while the GDPR cooperation mechanism only applies to Data Protection Authorities (**art. 20(2)**).

#### **IV. OTHER CHANGES**

20. **Recital 37** has been deleted as it corresponds to art. 17 that has been moved to the Telecoms Code.
21. In **recital 41** reference to delegated acts for codes to identify marketing calls has been deleted in line with the corresponding deletion of art. 16(7). The rest of the recital is not for discussion during the meeting on 25 October as it is linked to Chapter VI.

#### **IV. CONCLUSION**

22. At the meetings of 25 October, the Presidency intends to discuss the text of the proposal article-by-article. During the discussion, the Presidency will invite delegations to express their **views on proposed changes**.
23. The Presidency kindly asks delegations to provide **written comments by 6 November 2017**.

---

- (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>2</sup>, also apply *mutatis mutandis* to end-users who are legal persons. This includes the ~~definition of provisions on~~ **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.~~
- (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.

<sup>2</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).

- (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.
- (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.

- (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 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>3</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.]

---

<sup>3</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).

## 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:

- (a) 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)**;
- (b) 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}~~ **providers of 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 ~~{Providers of publicly available directories}~~ **providers 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 publicly available directory}~~ **providers of 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}~~ **providers of 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 ~~{Providers of publicly available directories}~~ **providers 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 an equivalent level of 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.
-