Council of the European Union

Brussels, 30 October 2019
(OR. en)

13632/19

Interinstitutional File: 2017/0003(COD)

TELECOM 337
COMPET 704
MI 751
DATAPROTECT 262
CONSOM 289
JAI 1135
DIGIT 161
FREMP 158
CYBER 294
CODEC 1561

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	13080/19
No. Cion doc.:	5358/17
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)

In view of the WP TELE meeting on 7 November, delegations will find in Annex a revised text of the ePrivacy proposal. During the meeting, the Presidency would like to discuss:

1/ the **scope issue**, based on the options presented in section I. below, and

2/ **the rest of the text,** on the basis of modifications introduced by the Presidency as listed in section II of this note.

I. Scope

A. The scope of application of the ePrivacy Regulation and alternative way forwards

In the latest version of the presidency compromise text, the Precidency introduced some clarifications to the scope of application of the ePrivacy Regualtion. As many questions regarding these changes were raised, the Presidency would like to provide some alternative suggestions to solve the issue and related clarification:

Option 1:

Recital 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. Processing of electronic communication content might be necessary also for some functionalities used normally in services for individual use, such as storing, searching and organising the messages in email or messaging applications.

Article 2(2)(e)

(e) electronic communications ~~content~~ data ~~after receipt~~ processed after receipt by the end-user concerned~~,~~ or by a third party entrusted by ~~them~~ ~~the~~ that end-user ~~to record, store or otherwise process such data their electronic communications content~~;

Article 6a(1)(a)

for the purpose of the provision of a~~n~~ ~~explicitly requested~~ service requested 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 interests of another person concerned ~~and does not exceed the duration necessary for the provision of the requested services and is limited to that purpose only~~; or

Article 7(1)

Without prejudice to point**s** (b)**, ~~and~~ (c) and (d)** of Article 6(1) and **~~points (a), and (b) of~~** Article 6**~~(3)~~a(1)**, 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**. ~~Upon the end-user's explicit request the provider of the electronic communications service may store that end-user's electronic communications content as an integral part of the service as long as requested by the end-user. Such data may be processed in accordance with Article 6 and 6a.~~ ~~recorded, or stored or otherwise processeed by the end-users after receipt, or by a third party entrusted by them to record, store or otherwise process such data. Such processing shall take place in accordance with Regulation (EU) 2016/679.~~**

Clarifications on proposed changes:

As the concept of storing of data as 'integral part of the electronic communication service' introduced by the Presidency in art. 7 was considered confusing by many of the delegations and possibly extending the scope, these references have been deleted. Instead it has been clarified in recital 19a that the content could be stored by the electronic communications service provider (ECSP) under art. 6a(1)(a). If the ECSP stores the content in relation to this ground of processing it would be only possible to process for this purpose (service provider, such as email provider, could store the electronic communications content as part of the service requested by the end-user if obtained the consent of that end-user but can naturally only process the data for the specified purposes the consent of the end-user is obtained for in accordance with article 6a(1)(a)).

The end-user could still entrust a third party after receipt to process the content on their behalf as this would be outside of the scope of the regulation according to article 2(2)(e). The concept of the third party would be clarified in recital 19 (see Chapter B).

Option 2:

Recital 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. Processing of electronic communication content might be necessary also for some functionalities used normally in services for individual use, such as searching and organising the messages in email or messaging applications.

Article 2(2)(e)

(e) electronic communications ~~content~~ data ~~after receipt~~ processed after receipt by the end-user concerned~~,~~ or by a third party entrusted by ~~them~~ ~~the~~ that end-user ~~to record, store or otherwise process such data their electronic communications content~~;

Article 6(1)(a)

(a) it is necessary to **provide the electronic communication service** ~~achieve the transmission of the communication.~~

Article 6a(1)(a)

for the purpose of the provision of a~~n explicitly requested~~ service requested 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 interests of another person concerned ~~and does not exceed the duration necessary for the provision of the requested services and is limited to that purpose only~~; or

Article 7(1)

~~Without prejudice to points (b)~~**~~, and (c) and (d)~~** ~~of Article 6(1) and~~ **~~points (a), and (b) of~~** ~~Article 6a(3) (1), t~~ **T**he provider of the electronic communications service shall, after receipt, erase electronic communications content or make that data anonymous **when it is no longer necessary for the purpose of the processing in accordace with article 6(1) and 6a(1).** ~~**provision of the electronic communication service requested by the end-user.**~~ ~~after receipt of electronic communication content by the intended recipient or recipients~~**.** **Upon the end-user's explicit request the provider of the electronic communications service may store that end-user's electronic communications content as an integral part of the service as long as requested by the end-user. Such data may be processed in accordance with Article 6 and 6a.** ~~**recorded, or stored or otherwise processeed by the end-users after receipt, or by a third party entrusted by them to record, store or otherwise process such data. Such processing shall take place in accordance with Regulation (EU) 2016/679.**~~

Clarifications on proposed changes:

In this option, further changes have been made to art. 6 and art. 7 to simplify the text. According to the changes made to art. 6 the electronic communications data could be processed if it is necessary to provide electronic communication service. Electronic communication service is defined in the Code. Processing necessary to provide electronic communication service could be considered to be more flexible ground for processing compared to transmission of the communication and could also cover storage of the messages if necessary for the service. Art. 7 would be changed to reflect the changes made in art. 6. As this would mean also adding reference to point (a) of art. 6, the text would be simplified just to say that the provider of the electronic communications service shall erase electronic communications content or make that data anonymous when it is no longer necessary for the purpose of the processing in accordace with art. 6(1) and 6a(1).

B. The concept of a third party

The concept of a third party introduced in the recital 19 by the presidency did also raise some confusion. To further clarify the issue the below alternative solutions were identified by the Presidency. All of these options could be combined with both of the alternatives regarding the scope as described in part A.

Option 1 (the current text in recital 19 with some minor clarifications):

A third party should refer to a legal or natural person that does not provide an electronic communications service to the end-user concerned. However, sometimes the same legal or natural person could also provide different kind of services to the same end-user, for example information society service such as cloud storage. In this case the same legal person providing this other kind of service should be considered as a third party. ~~could also refer to that same legal or natural person when they provide service other than electronic communication service, such as information society service, to that end-user and that service is not an integral part of the electronic communication service, such as storing of photos or videos~~. This should not mean that the third party should ~~not~~ refer to the same legal person ~~electronic communication service provider when they provide service other than electronic communication service~~ if ~~that~~ the other service is provided as ~~integral~~ a part of the electronic communication service~~. The service could be considered to be integral part of the electronic communication service particularly when it is offered as part of the service~~, such as storage of the messages automatically in the cloud as part of the electronic communication service, such as email.

Clarifications:

During the meeting of 11 October, a question was posed, if the third parties would include also the electronic communication service providers. This was seen possibly leading to the situation that the Regulation could be circumvented, because the end-user could just entrust the third party to process their electronic communications data.

As the Presidency believes that this was never the purpose, it was considered necessary to clarify that a third party should refer to a legal or natural person that does not provide an electronic communications service to the end-user concerned.

However, it was noted too that the same provider could also provide different kind of services to the same end-user, for example cloud storage, that are completely separate from the electronic communication service (Google can offer gmail and Google Drive or Proximus can offer phone contract but also cloud storage). It should not be the case that this service provider could never be considered as third party. For this reason, to ensure level-playing field it was further clarified that a third party could also refer to that same provider when they provide service other than electronic communication service, such as information society service, to that end-user. To further clarify that the meaning of this change is not to enable the service provider just to circumvent the rules of the regulation, it is clarified that the third party would not mean ECSP if the other service, such as cloud storage, is offered as a part of the electoric communication service, such as storage of messages automatically in the cloud.

The references to integral part were deleted as they could be cosidered to broaden the scope, which was not the purpose.

Option 2 (simplification):

Recital 19

A third party should refer to a legal or natural person that does not provide an electronic communications service to the end-user concerned. However, sometimes that same legal or natural person could also provide different kind of services to the same end-user, for example information society service such as cloud storage. In this case the same legal person providing this other kind of service should be considered as a third party.

~~could also refer to that same legal or natural person when they provide service other than electronic communication service, such as information society service, to that end-user and that service is not an integral part of the electronic communication service, such as storing of photos or videos~~. ~~Third party should not refer to electronic communication service provider when they provide service other than electronic communication service if that service is provided as integral part of the electronic communication service. The service could be considered to be integral part of the electronic communication service particularly when it is offered as part of the service, such as storage of the messages in the cloud as part of the electronic communication service, such as email.~~

Clarifications:

This option would be simplier than option 1, but would lead to the same result and could be misunderstood to open up the possibility to circumvent the rules of the regulation by claiming that the automatic storage of the data in the cloud would be a separate information society service.

Option 3:

A third party should refer to a legal or natural person that does not provide an electronic communications service to the end-user concerned and is not part of the same undertaking as the provider.

Clarifications:

In option 3, it would be further explicitly clarified that the third party should not refer to the ECSP or any part of the same undertaking within the meaning of Union competition law. Also it would be further simplified by deleting the reference to different services, as it could be argued that 'entrusting' in art. 2(2)(e) only covers activities done automatically by the provider (for example automatically moving the messages to the cloud) without the involvement of the end-user. If the communication content were moved by the end-user after receipt to another service, it would be processing by the end-user that is also outside the scope of the Regulation.

II. New Presidency document - proposed modifications

Based on the previous discussions in WP TELE and delegations' written comments, the Presidency has introduced the following modifications in the text (marked in underline):

- further clarifications have been introduced in **rec. 19a** with regard to processing of electronic communications data for some functionalities requested by the end-user;

- modifications in **rec. 20** further elaborate on the issue of genuine choice for the end-user in the context of cookies;

- the Presidency has included a clarification in **rec. 33a** that Member State may also use the opt-out option in the context of an existing customer relationship;

- in **art. 2(2)(f)**, the changes would specify that the processing upon receipt by end-user or third party entrusted for the purpose of protecting the end-user's terminal equipment would be outside the scope of the Regulation. Upon receipt would include also processing just before receipt, as this could be necessary to efficiently protect the terminal equipment. A corresponding modification has been introduced in **rec. 8**;

- in **art. 6a(2)**, the new text specifies that the supervisory authority should be consulted if necessary pursuant to art. 36(1) of the GDPR. A corresponding modification has been introduced in **rec. 19**;

- the word 'further' has been included in **art. 6c(1)(c)**;

- in **art. 8(1)(da)**, the Presidency has included the reference to 'terminal equipment';

- the references to Directive (EU) 2018/1972 have been corrected throughout the text.

ANNEX

(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**~~ **confidentiality** 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 include~~s~~ 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) Regulation (EU) 2016/679 regulates the protection of personal data. This Regulation protects in addition the respect for private life and communications. 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 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. The provisions particularise Regulation (EU) 2016/679 as regards personal data by translating its principles into specific rules. If no specific rules are established in this Regulation, Regulation (EU) 2016/679 should apply to any processing of data that qualify as personal data. The~~y~~ provisions complement Regulation (EU) 2016/679 by setting forth rules regarding subject matters that are not within the scope of Regulation (EU) 2016/679, such as the protection of the rights of end-users who are legal persons. Processing of electronic communications data by providers of electronic communications services and networks should only be permitted in accordance with this Regulation. This Regulation does not impose any obligations on the end-user. ~~Insofar as~~ Eend-users who are legal persons may ~~benefit from~~ have rights conferred by ~~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[1], 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.~~

(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.

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[1] 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).

~~(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[2] 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.

[2] 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).

(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.

(7a) This Regulation should not apply to the protection of fundamental rights and freedoms ~~regarding~~ related to activities which fall outside the scope of Union law, ~~such as~~ and in any event activities concerning national security and defence.

(8) This Regulation should apply to providers of electronic communications services~~,~~ and 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.**

Some end-users, for example providers of payment services ~~providers and~~ or payment systems, process as recipients their electronic communications data for different purposes or ~~permit other~~ request a third part~~ies~~y to process their electronic communications data on their behalf. It is also important that end-users, including legal entities, have the possibility to take the necessary measures to secure their services, networks, employees and customers from security threats or incidents. Information security services may play an important role in ensuring the security of end-users' digital ~~environment~~ sphere. ~~Such processing may include the processing by~~ For example, an end-user as an information society service provider~~, or another~~ may process its electronic communications data, or may request a third party, such as a provider of security technologies and services, to process that end-user's electronic communications data on its behalf, for purposes such as ensuring network and information security, including the prevention, monitoring and termination of fraud, unauthorised access and Distributed Denial of Service attacks, or facilitating efficient delivery of website content. ~~Such p~~ Processing of their electronic communications data by the end-users concerned, or by a third party ~~requested~~ entrusted by the end-users concerned to process their electronic communications data after receipt on their behalf, ~~is~~ should not be covered by this Regulation. For the purpose of protecting the end-user's terminal equipment ~~ensuring network and information security~~ processing ~~also~~ ~~prior~~ upon receipt, including also just before receipt, by a third party entrusted should not be covered by this Regulation.

(8a) This Regulation does not apply to the electronic communications data of deceased persons. Member States may provide for rules regarding the processing of electronic communications data of deceased persons.

~~(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[3]. 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.

[3] 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 **(EU) 2018/1972** ~~of the European Parliament and of the Council establishing the European Electronic Communications Code[4]~~]. 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. ~~**Services such as linear broadcasting, video on demand, websites, social networks, blogs, or exchange of information between machines, should not be considered as interpersonal communications services.**~~

(11a) The protection of confidentiality of communications is crucial also as regards interpersonal communications services that are ancillary to another service; therefore, **the processing of electronic communications data in the context of the provision of** such type of **minor ancillary** 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**~~

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[4] **Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast).** ~~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)).~~

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, such services constitute interpersonal communications services. Conversely, a communications channel does not constitute an interpersonal communications service when it does not enable direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s). This is for example the case when the entity providing the communications channel is at the same time a communicating party, such as a company that operates a communications channel for customer care that allows customers solely to communicate with the company in question. Also, where access to ~~an~~ electronic communications is available for anyone, e.g. communications in an electronic communications channel in online games which is open to all persons playing the game, such channel does not constitute an interpersonal communications feature. This reflects the end-users' expectations regarding the confidentiality of a service.

(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 (EU) 2018/1972 ~~establishing the European Electronic Communications Code~~],~~T~~t**he transmission **services used for the provision** of machine-to-machine ~~communications~~ **services regularly** involves the conveyance of signals ~~over~~ **via** a**n 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. ~~**Therefore, only networks proving 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.**~~ 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 ~~**publicly available**~~ electronic communications data using **publicly available** electronic communications services and public **electronic** communications networks. In contrast, this Regulation should not apply to closed groups of end-users such as **home (~~WIFI or~~ fixed or wireless) networks or** corporate networks **or networks to which the**~~,~~ access ~~to which~~ is limited **to a pre-defined group of end-users, e.g.** to **family members or**~~,~~ members of ~~**the**~~ **a** corporation.~~**,Similarly, this Regulation does not apply to ~~electronic communications services~~ data processed by services or networks used ~~at~~ for purely internal communications purposes between public institutions, courts, court administrations, financial, social and employment administrations**. ~~**Therefore, only networks proving 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. This Regulation also does not apply to electronic communications data circulating within a home WIFI network. However, a**~~**As soon as ~~these~~ electronic communications data ~~exit~~ is transferred from ~~such~~ a closed group network ~~and enter~~ to a public~~ly available~~ electronic communications network, this Regulation applies to such data, including when it is M2M/IoT and personal/home assistant data. The provisions of this Regulation regarding the protection of end-users' terminal equipment information also apply in the~~is~~ case ~~to~~ of terminal equipment connected to ~~the~~ a closed group network such as a home (~~WIFI or~~ fixed or wireless) network which in turn is connected to public electronic communications network.**

(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.

(15aa) In order to ensure the confidentiality of electronic communications data, providers of electronic communications services should apply security measures in accordance with Article ~~[~~40~~]~~ of ~~the~~ ~~[~~Directive (EU) 2018/1972 ~~establishing the European Electronic Communications Code~~~~]~~ and Article 32 of Regulation (EU) 2016/679. Moreover, trade secrets are protected in accordance with Directive (EU) 2016/943.

(15a) The prohibition of interception of electronic communications ~~data~~ content under this Regulation should apply until receipt of the content of the electronic communication by the intended addressee, i.e. during the end-to-end exchange of electronic communications content between end-users. Receipt implies that the end-user gains control over, and has the possiblity to interact with, the individual electronic communications content, for example by recording, storing, printing or otherwise processing such data. The exact moment of the receipt of electronic communications content may depend on the type of electronic communications service that is provided. For instance, depending on the technology used, a voice call may be completed as soon as either of the end-users ends the call. For electronic mail or instant messaging, depending on the technology used, the moment of receipt ~~is~~ may be ~~completed~~ as soon as the addressee has collected the message, typically from the server of the electronic communications service provider. Upon receipt, electronic communications content and related metadata should be erased or made anonymous in such a manner that no natural or legal person is identifiable, by the provider of the electronic communications service except when processing is permitted under this Regulation or when the end-users has entrusted ~~the provider of the electronic communications service or another~~ a third party to record, store or otherwise process such data in accordance with Regulation (EU) 2016/679. This should not prevent processing of electronic communications data on the end-user's terminal equipment or within the end-user's closed network –even before receipt - by third parties mandated by the end-user for the purpose of protecting the end-user's terminal equipment or closed network.

(16) The prohibition of **processing, including** storage of communications is not intended to prohibit any automatic, intermediate and transient **processing, including** 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 **without consent of the end-user** to ensure the security ~~and continuity~~, **including the availability, authenticity, integrity or confidentiality,** of the electronic communications services, ~~including~~ **for example** checking security threats such as the presence of malware **or viruses, or the identification of phishing ~~emails~~. Security measures are essential to prevent personal data breaches in electronic communications. Spam ~~e-mails~~ electronic messages may also affect the availability of ~~email~~ the respective services and could potentially impact the performance of networks and ~~email~~ services, which justifies the processing of electronic communications data to mitigate this risk. Such security measures, including anti-spam measures, should be proportionate and should be performed in the least intrusive manner. Providers of electronic communications services are encouraged to offer end-users the possibility to check ~~e-mails~~ electronic messages deemed as spam in order to ascertain whether they were indeed spam. ~~or~~ Moreover, the prohibition of processing ~~Neither~~ should neither~~it~~ prohibit** the processing of metadata to ensure the necessary quality of service requirements, such as latency, jitter etc**., nor the processing of metadata necessary for the purpose of management or optimisation of the network. Management or optimisation of the network refers to ~~improving the performance and~~ processing necessary to develop~~ment~~ and manage the scalability and capacity of the network. ~~nor t~~The processing of ~~meta~~data to make it anonymous ~~nor the processing of metadata to make it anonymous~~ should not be prohibited either**.

(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.

(17aa) Metadata such as location data can provide valuable information, such as insights in human movement patterns and traffic patterns. Such information may, for example, be used for urban planning purposes. Further ₽processing for such purposes other than for which the metadata where initially collected may take place without the consent of the end-users concerned, provided that such processing is compatible with the purpose for which the metadata are initially collected, certain additional conditions are met and safeguards are in place, including, where appropriate, the consultation of the supervisory authority, an impact assessment by the provider of electronic communications networks and services and the requirement to genuinely anonymise the result before sharing the analysis with third parties. As end-users attach great value to the confidentiality of their communications, including their physical movements, such data cannot be used to determine the nature or characteristics on an end-user or to build a profile of an end-user, in order to, for example, avoid that the data is used for segmentation purposes, to monitor the behaviour of a specific end-user or to draw conclusions concerning the private life of an end-user. For the same reason, the end-user must be provided with information about these processing activities taking place and given the right to object to such processing.

(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 counting purposes should be considered to be permitted processing. This type of processing should be subject to safeguards to ensure privacy of the end-users by employing appropriate security measures such as encryption and pseudonymisation. In addtion, 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~~ **content** 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~~ **content**, the provider of the electronic communications service should ~~always~~ consult the supervisory authority ~~prior to the processing~~ **if necessary pursuant to Article 36 (1) of Regulation (EU) 2016/679**. 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 th**ose** ~~end-user,~~ end-users or by a third party entrusted by them to record or store such data **as this kind of processing is outside of the scope of this Regulation**. Any processing of such data must comply with Regulation (EU) 2016/679. **A third party should refer to a legal or natural person that does not provide an electronic communications service to the end-user concerned. However, third party could also refer to that same legal or natural person when they provide service other than electronic communication service, such as information society service, to that end-user and that service is not an integral part of the electronic communication service, such as storing of photos or videos. Third party should not refer to electronic communication service provider when they provide service other than electronic communication service if that service is provided as integral part of the electronic communication service. The service could be considered to be integral part of the electronic communication service particularly when it is offered as part of the service, such as storage of the messages in the cloud as part of the electronic communication service, such as email.**

(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. Processing of electronic communication content might be necessary also for some functionalities used normally in services for individual use, such as searching and organising the messages in email or messaging applications. Therefore, as regards the processing of electronic communications content for services ~~explicitly~~ requested by the end-user for their own individual use, consent should only be ~~requested~~ required 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~~ should not adversely affect fundamental rights and interest of another end-user concerned. Processing of electronic communications data should be allowed with the prior consent of the end-user concerned and to the extent necessary for the provision of the requested functionalities.

(19b) Providers of electronic communications services may, for example, obtain the consent of the end-user for the processing of electronic communications data, at the time of the conclusion of the contract, and any moment in time thereafter. In some cases, the legal ~~entity~~ person having subscribed to the electronic communications service may allow a natural person, such as an employee, to make use of the service in accordance with Regulation 2016/679. ~~In such case, consent needs to be obtained from the individual 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 **use of processing and storage capabilities and the collection of information from** end-user's terminal equipment should be allowed only with the end-user's consent ~~and~~ **or** for specific and transparent purposes. **The information collected from end-user's terminal equipment can often contain personal data. As the provisions of this Regulation particularise and complement the general rules on the protection of personal data laid down in Regulation (EU) 2016/679, that Regulation should apply to the processing of this data, to the extent it is personal data, after it has been collected from the end user's terminal equipment. In light of the principle of purpose limitation according to Article 5 of Regulation (EU) 2016/679 and Article 8 of this Regulation, such data should only be processed for purposes compatible with the purpose for which it was collected from the end-user's terminal equipment.**

The responsibility for obtaining consent for the storage of a cookie or similar identifier lies on the entity that makes use of processing and storage capabilities of terminal equipment or collects information from end-users' terminal equipment, such as an information society service provider or ad network provider. Such entities may request another party to obtain consent on their behalf. The end-user's consent to storage of a cookie or similar identifier may also entail consent for the subsequent readings of the cookie in the context of a revisit to the same website domain initially visited by the end-user. ~~Access to specific website content may still be made conditional on the consent to the storage of a cookie or similar identifier.~~

~~Not all cookies are needed in relation to the purpose of the provision of the website service. Some are used to provide for additional benefits for the website operator.~~ Making access to ~~the~~ website content provided without direct monetary payment ~~conditional to~~ dependent on the consent of the end-user to the storage and reading of cookies for additional purposes would normally not be considered ~~disproportionate~~ ~~in particular~~ ~~inter alia~~ as depriving the end-user of a genuine choice if the end-user is able to choose, on the basis of clear, precise and user-friendly information about the purposes of cookies or similar techniques, between an offer that includes consenting to the use of cookies for additional purposes on the one hand, and an equivalent offer by the same provider that does not involve consenting to data use for additional purposes, on the other hand. Conversely, in some cases, making access to website content ~~conditional to~~ dependent on consent to the use of such cookies may be considered, in the presence of a clear imbalance between the end-user and the service provider ~~to be disproportionate~~ as depriving the end-user of a genuine choice. This would normally be the case for websites providing certain services, such as those provided by public authorities or by undertakings in a dominant position, where the user could be seen as having few or no other options but to use the service, and thus having no real choice as to the usage of cookies.

(20a) End-users are ~~increasingly~~ often requested to provide consent to the storage and access to stored data in their terminal equipment, due to the ubiquitous use of tracking cookies and similar tracking technologies. As a result, end-users ~~are~~ may be overloaded with requests to provide consent, ~~leading to what has been can be referred to as 'consent-fatigue'.~~ This can lead to a situation where consent request information is no longer read and the protection offered by consent is undermined. Implementation of technical means in electronic communications software to provide specific and informed consent through transparent and user-friendly settings, can be useful to address this ~~problem~~ issue. Where available and technically feasible, ~~A~~an end user may therefore grant, through software settings, consent to a specific provider for the use of processing and storage capabilities of his or her terminal equipment for one or multiple specific purposes across one or more specific services of that provider. ~~Such consent can be given to several providers for specific purposes.~~For example, an end-user can give consent to the use of ~~all or~~ certain types of cookies by whitelisting one or several providers for their specified purposes. ~~To that end, web browser and operating system providers p~~Providers of software are encouraged to include settings in their software which allows end-users, in a user friendly and transparent manner, to manage consent to the storage and access to stored data in their terminal equipment by easily setting up and amending whitelists and withdrawing consent at any moment~~, such as whitelisting mechanisms. should To this end they are encouraged to ensure that end users can easily set up and amend such white lists and withdraw consent at any moment in a user-friendly and transparent manner~~.

(21) ~~**Exceptions to the obligation to obtain consent to make u**~~**U**se of the processing and storage capabilities of terminal equipment or ~~**to**~~ access **to** information stored in terminal equipment **without the consent of the end-user** 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~~ **providing** a specific ~~**information society**~~ service**, such as service provision that requires use of ~~those used by~~ IoT devices (for instance connected devices like connected thermostats, smart meters, ~~or~~ medical devices or automated and connected vehicles),** ~~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**. ~~**Access to specific website content may still be made conditional on the well-informed acceptance of the storage of a cookie or similar identifier, if it is used for a legitimate purpose. This will for example not be the case of a cookie which is recreated after the deletion by the end-user. Consent should not be necessary either if the use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment is necessary for the provision of the information society services, such as those used by IoT devices (for instance connected devices, such as connected thermostats), requested by the end-user.**~~

In some cases the use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment may also be necessary for providing an information society service, requested by the end-user, that is wholly or mainly financed by advertising provided that, in addition, the end-user has been provided with clear, precise and user-friendly information about the purposes of cookies or similar techniques and has accepted such use.

~~Conversely, t~~**To the extent that use is made of processing and storage capabilities of terminal equipment and information from end-users' terminal equipment is collected for other purposes than for what is necessary for the purpose of carrying out the transmission of an electronic communication over an electronic communications network or for the provision of the ~~information society~~ service requested, consent should be required. ~~Where the terminal equipment is provided to the end-user by the provider of the information society service~~, In such a scenario, consent should normally be given by the end-user who requests the service from the provider of the service. ~~Where that end-user enables the use of the terminal equipment by other end-users, such as employees, it should respect the rights of those other end-users in accordance with Regulation (EU) 2016/679, employment and other applicable laws.~~**

~~**In some cases the use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment may also be necessary for providing an information society service, requested by the end-user, that is wholly or mainly financed by advertising provided that, in addition, the end-user has been provided with clear, precise and user-friendly information about the purposes of cookies or similar devices and has accepted such use.**~~

(21a) Cookies can also be a legitimate and useful tool, for example, in **assessing the effectiveness of a delivered information society service, for example of website design and advertising or by helping to** measure~~ing 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, which always require the consent of the end-user**. 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 vulnerablities and other security 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.** ~~**Consent should not be necessary either if the use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment is necessary for the provision of the information society services, such as those used by IoT devices (for instance connected devices, such as connected thermostats), requested by the end-user.**~~

~~(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.~~

~~(22a) 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 the 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. The responsibility for obtaining consent with the storage of a cookie and for any penalties for breach of duty lies on the information society service provider.~~

~~(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 allow cookies') to lower (for example, 'always accept allow cookies') and intermediate (for example, 'reject third party cookies' or 'only accept allow first party cookies'). Such privacy settings should be presented offered in a an easily visible and intelligible manner. General privacy settings that do not provide the end-user with information about the purpose for which information can be stored on the terminal equipment, or information already stored on that equipment can be processed, as a consequence of the configured privacy settings, cannot signify the end-user's consent to the storing of information on the terminal equipment or the processing of information already stored on that equipment.~~

~~(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 It is necessary to require providers of software enabling access to internet that, at the moment of installation or first use and at the moment of every update that change the privacy settings, end-users are informed about the possibility to choose the available 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 default setting and about the risks associated with the different privacy settings, including those related 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. Updates of software enabling access to internet should not alter the privacy settings selected by the end-user. 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. This Regulation does should not prevent website providers from requesting the consent of the end-user for the use of cookies irrespective of the privacy setting selected by the end-user.~~

(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 if 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 locations**, subject to the conditions laid down in this Regulation,** ~~.~~ ~~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.~~

Processing the information emitted by the terminal equipment to enable it to connect to another device would be permitted if the end-user has given his or her consent or if it is necessary for the provision of a service requested by the end-user. This kind of processing might be necessary for example for the provision of some IoT related services.

(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**, including by way of derogations,** 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**, including dissemination of child pornography,** 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, **such as legislative measures providing for the retention of data for a limited period of time,** 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 or other types of terminal equipment based location data, such as location data derived from the WiFi functionality, 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. Directive 2014/53/EU empowers the Commission to adopt delegated acts requiring that specific categories or classes of radio equipment support certain features ensuring access to emergency 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~~ **unwanted, malicious** and nuisance calls**, such as calls originating from invalid numbers, i.e. numbers that do not exist in the numbering plan, valid numbers that are not allocated to a provider of a number-based interpersonal communications service, and valid numbers that are allocated but not assigned to an end-user**. 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**~~ **information on** end-users ~~information~~ ~~**personal data**~~ **of number-based interpersonal communication services** such as **name,** phone numbers (including mobile phone numbers), email address ~~contact details~~**, home address** and includes inquiry services, **the main function of which is to enable to identify such end-users**. ~~The right to privacy and to protection of the personal data of a natural person requires that e~~**E**nd-users that are natural persons ~~are~~ **should be 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**~~, **unless Member States provide that such end-users have the right to object to inclusion of their personal data**. 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. **End-users who are natural persons acting in a professional capacity should be treated as legal persons for the purpose of the provisions on publicly available directories.**

(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~~**P**roviders of ~~publicly available directories~~ **number-based interpersonal communications services ~~and/or providers of publicly available directories~~** 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.

~~(31a) 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.~~

(32) In this Regulation, direct marketing **communications** refers to any form of advertising **sent** by ~~which~~ a natural or legal person ~~sends~~ **~~or presents~~** ~~direct marketing communications~~ directly to one or more ~~identified or identifiable~~ **specific** end-users using **publicly available** electronic communications services.

The provisions on direct marketing communications ~~do~~ should not apply to ~~any~~ other form of marketing or advertising that is not sent directly to any specific end-user for reception by that end-user at ~~via~~ his or her addresses, number or other contact details, e.g. the display~~ing~~ of advertising ~~to the general public~~ on a visited website or within an information society service requested by that ~~the~~ end-user ~~which is not directed to any specific identified or identifiable end-user and do not require any contact details about the end-user. An identified or identifiable end-user is the user that has logged in with a private account or personal log-in.~~ In addition to **direct communications advertising for** the offering of products and services for commercial purposes, **Member States may decide that** ~~this should~~ **direct marketing communications ~~also~~ may** include ~~messages~~ **direct marketing communications** sent by political parties that contact natural persons via **publicly available** electronic communications services in order to promote their parties. The same ~~should~~ appl~~y~~**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-user**s 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.

(~~36~~**33a**)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~~ **which allow all or certain types of voice-to-voice calls** to end-users **who are natural persons and** who have not objected**, including in the context of an existing customer relationship**.

(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 **and, where applicable,** ~~or~~ on **whose** 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. **The designation of supervisory authorities responsible for the monitoring of the application of this Regulation cannot affect the right of natural persons to have compliance with rules regarding the protection of personal data subject to control by an independent authority in accordance with Article 8(3) of the Charter as interpreted by the Court. 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[5]. 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.

[5] 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) **end-users' terminal equipment** 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 electonic communications services;

(e) the sending ~~or presenting~~ of direct marketing communications to end-users.

2. This Regulation does not apply to:

(a) activities **which fall outside the scope of Union law, ~~such as~~ and in any event activities concerning national security and defence;**

~~(aa) activities concerning national security and defence~~;

(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;

(e) electronic communications ~~content~~ data after receipt processed by the end-user concerned, or by a third party entrusted by ~~them~~ ~~the~~ that end-user ~~to record, store or otherwise process such data their electronic communications content~~;

(f) electronic communications ~~meta~~data ~~before~~ ~~receipt~~ processed upon receipt by the end-users concerned or by a third party entrusted by ~~them~~ the end-user for the purpose of protecting the end-user's terminal equipment ~~ensuring network and information security~~ ~~to record, store or otherwise process their electronic communications metadata on their behalf~~.

3. The processing of electronic communications data by the Union institutions, bodies, offices and agencies is governed by Regulation (EU) ~~00/0000~~ **2018/1725** ~~[new Regulation replacing Regulation 45/2001]~~.

4. This Regulation shall be without prejudice to the application of Directive 2000/31/EC[6], 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.

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6 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).

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 **terminal equipment** 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;**~~

(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~~ a person using processing and storage capabilities or ~~collects~~ collecting 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~~**31**) respectively of Article 2 of ~~[~~Directive **(EU) 2018/1972** ~~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[7]~~.~~ **;**

(d) the defintion of ‘information society service’ in point (b) of Article 1 (1) of Directive (EU) 2015/1535[8].

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.

For the purposes of this Regulation, the definition of 'processing' referred to in Article 4(2) of Regulation 2016/679 shall not be limited to processing of personal data.

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;

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7 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).

8 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).

(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~~ **number-based interpersonal** 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 **and the main function of which is to enable ~~to identify~~ identification of such end-users**;

(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**, including e-mail, SMS, MMS and functionally equivalent applications and techniques**;

(f) ‘direct marketing communications’ means any form of advertising, whether written or oral, sent ~~**or presented**~~ **via a publicly available electronic communications service directly** to one or more ~~identified or identifiable~~ **specific** end-users ~~of electronic communications services~~, including the **placing of voice-to-voice calls, 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**;**

(i) 'direct marketing calls' means direct marketing voice-to-voice calls and calls made via automated calling and communication systems for the purpose of direct marketing.

Article ~~9~~4a

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**.

2a. As far as the controller is not able to identify a data subject, the technical protocol showing that consent was given from the terminal equipment shall be sufficient to demonstrate the consent of the end-user according Article 8 (1) (b).

3. End-users who have consented to the processing of electronic communications data as set out in point (c) of Article 6**b** ~~(2)~~ and points (a) and (b) of Article 6**a**~~(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 ~~6~~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

Electronic communications data shall be confidential. Any **interference with ~~processing of~~** electronic communications data, ~~such as by~~ **including** listening, tapping, storing, monitoring, scanning or other kinds of interception, ~~**or**~~ surveillance ~~**or**~~ **and processing** of electronic communications data, by ~~**persons**~~ **anyone**other than the end-users **concerned**, shall be prohibited, except when permitted by this Regulation.

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 security risks and/or attacks** in the transmission of electronic communications~~, for the duration necessary for that purpose~~**;**

(c) it is necessary to detect or prevent security risks and/or attacks on end-users' terminal equipment~~, for the duration necessary for that purpose~~;

~~[(d) it is necessary to enable the detection and deletion of material constituting child pornography, as defined in Article 2(c) of the Directive 2011/93/EU~~.

~~1a. Processing for the detection and deletion of material constituting child pornography, in accordance with paragraph 1(d), shall not analyze the actual communications content and shall not store any copies of that content. Processing shall be subject to appropriate safeguards, be limited to the sole purpose of detecting child pornography, and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the end user, including carrying out of an impact assessment in accordance with Article 35 of Regulation (EU) 2016/679 and a consultation of the supervisory authority.]~~

(d) it is necessary for compliance with a legal obligation to which the provider is subject laid down by Union or Member State law in accordance with Article 11.

2. **Electoronic communications data shall only be permitted to be processed for the duration necessary for the specified purpose or purposes according to Articles 6 to 6c and if the specified purpose or purposes cannot be fulfilled by processing information that is made anonymous.**

~~4~~3. **A third party acting on behalf of a provider of electronic communications network or services ~~shall~~ may be permitted to process electronic communications data in accordance with ~~paragraphs 1 to 3~~ Articles 6 to 6c provided that the conditions laid down in Article 28 of Regulation (EU) 2016/679 are met.**

Article 6a [previous art. 6(3)]

Permitted processing of electronic communications content

~~3~~**1**. **Without prejudice to ~~paragraph~~ Article (6)1, ~~P~~p**roviders 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~~

(~~a~~a) for the purpose of the provision of an ~~explicitly requested~~ service requested 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 interests of another person 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~~

2. ~~the provider has~~ ~~p~~**Prior to the processing in accordance with point (b) of paragraph 1 the provider shall carri~~~~ed~~**y out an assessment of the impact of the envisaged processing operations on the protection of electronic communications data and** consult~~ed~~ the supervisory authority **if necessary pursuant to Article 36(1) of Regulation (EU) 2016/679**. ~~Points (2) and (3) of~~ Article 36**(2) and (3)** of Regulation (EU) 2016/679 shall apply to the consultation of the supervisory authority.

Article 6b [previous art 6(2)]

Permitted processing of electronic communications metadata

~~2.~~ **Without prejudice to ~~paragraph~~ Article (6)1, ~~P~~p**roviders of electronic communications **networks and** services ~~may~~ **shall be permitted to** process electronic communications metadata **only** if:

(a) it is necessary **for the purposes of network management or network optimisation, ~~and for the duration necessary for that purpose, provided that the purpose or purposes concerned could not be fulfilled by processing information that is made anonymous and for the duration necessary for that purpose,~~** or to meet **~~mandatory~~ technical** quality of service requirements pursuant to ~~[~~Directive **(EU) 2018/1972** ~~establishing the European Electronic Communications Code]~~ or Regulation (EU) 2015/2120[9] ~~for the duration necessary for that purpose~~; or

[9] 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).

(b) it is necessary for **calculating and billing interconnection payments or for the performance of ~~the~~ an electronic communications service contract to which the end-user is party, ~~including to the extent more~~ in particular if necessary for** billing, **~~calculating interconnection payments,~~ or if it is necessary for** detecting or stopping fraudulent, or abusive use of, or subscription to, electronic communications services; 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, in the case of emergency, ~~normally~~ in general upon request of a ~~competent~~ public authority, in accordance with Union or Member State law; or

(f) it is necessary for statistical ~~counting~~purposes, ~~other than based on electronic communications metadata that constitute location data,~~ or for scientific research purposes, provided it is ~~based on~~ in accordance with Union or Member State law ~~which shall be proportionate to the aim pursued and provide for specific measures~~ and subject to appropriate safeguards, including encryption and pseudonymisation, to ~~safeguard~~ protect 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.

Article 6c [Previous art 6(2a)]

Compatible processing of electronic communications metadata

~~2a~~1. Where the processing for a purpose other than that for which the electronic communications metadata have been collected under ~~paragraphs 1 and 2~~ Articles 6 and 6b is not based on the end-user's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 11 , the provider of electronic communications networks and services shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the electronic communications metadata are initially collected, take into account, inter alia:

(a) any link between the purposes for which the electronic communications metadata have been collected and the purposes of the intended further processing;

(b) the context in which the electronic communications metadata have been collected, in particular regarding the relationship between end-users concerned and the provider;

(c) the nature of the electronic communications metadata as well as the modalities of the intended <u>further</u> processing, in particular where such data or the intended <u>further</u> processing could reveal categories of data, pursuant to Article 9 or 10 of Regulation (EU) 2016/679;

(d) the possible consequences of the intended further processing for end-users;

(e) the existence of appropriate safeguards, such as pseudonymisation and encryption.

2. Such processing, if considered compatible, may only take place, provided that:

(a) ~~the processing could not be carried out by processing information that is made anonymous, and~~ electronic communications metadata is erased or made anonymous as soon as it is no longer needed to fulfil the purpose, ~~and~~

(b) the processing is limited to electronic communications metadata that is pseudonymised, and

(c) the electronic communications metadata is not used to determine the nature or characteristics of an end-user or to build a profile of an end-user.

~~2aa~~3. For the purposes of ~~paragraph 2a~~ this Article, the providers of electronic communications networks and services shall:

~~(a) exclude electronic communications metadata that constitue location data that reveal special categories of personal data pursuant to Article 9 of Regulation (EU) 2016/679 from processing;~~

(b) not share such data with third parties, unless it is made anonymous;

(c) prior to the processing carry out an assessment of the impact of the envisaged processing operations on the protection of electronic communications data in accordance with Article 35 of Regulation (EU) 2016/679, which may result in the prior ~~and~~ consultation of the supervisory authority in accordance with Article 36(1) to (3) of Regulation (EU) 2016/679. ~~Points (2) and (3) of Article 36(2) and (3) of Regulation (EU) 2016/679 shall apply to the consultation of the supervisory authority~~; and

(d) inform the end-user of specific processing on the basis of ~~paragraph 2a~~ this Article and ~~give~~ of the right to object to such processing free of charge, at any time, and in an easy and effective manner. If the end-user objects, the electronic communications metadata shall no longer be processed for such purposes.

[**Article 6d [NEW]**

Processing of electronic communications data for the purpose of detecting, deleting and reporting material constituting child pornography

1. Without prejudice to Article (6)1, providers of number-independent interpersonal communications services shall be permitted to process electronic communication data for the sole purpose of detecting, deleting and reporting material constituting child pornography as defined in Article 2(c) of Directive 2011/93/EU, if the ~~technology used~~ processing meets all of the following characteristics:

(i) it creates a unique, non-reconvertible digital signature ("hash") of material attached to electronic communications for the sole purpose of comparing that hash with a database containing hashes of material previously reliably identified as constituting child pornography;

(ii) ~~it erases non-matching~~ electronic communications data and hashes of material attached to electronic communications are erased immediately after comparison with the database, except in the cases where material constituting child pornography has been detected by virtue of a hash;

(iii) it limits the ~~rate~~ probability of erroneous detection of material constituting child pornography to at most 1 in 50 billion;

~~(iv) it does not store electronic communications data, except in the cases where material constituting child pornography has been detected by virtue of a hash.~~

2. The provider of number-independent interpersonal communications services shall, prior to processing, carry out an assessment of the impact and consult the supervisory authority, in accordance with Article 35 and 36 of Regulation (EU) 2016/679. The assessment of impact shall include a description of the processing activities concerning both automatic and manual processing of the data, including description of possible algorithms or databases used for the processing and means to limit the rate of erroneous detection of material constituting child pornography and of the security measures, including limitation of personnel authorised to access electronic communications data, set up to protect end-users not involved in the communication of material consituting child pornography, and to protect the consulted content.]

Article 7

Storage and erasure of electronic communications data

1. Without prejudice to point**s** (b)**, ~~and~~ (c) and (d)** of Article 6(1) and **~~points (a), and (b) of~~** Article 6**~~(3)~~a**, 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**. Upon the end-user's explicit request the provider of the electronic communications service may store that end-user's electronic communications content as an integral part of the service as long as requested by the end-user. Such data may be processed in accordance with Article 6 and 6a. ~~recorded, or stored or otherwise processeed by the end-users after receipt, or by a third party entrusted by them to record, store or otherwise process such data. Such processing shall take place in accordance with Regulation (EU) 2016/679.~~**

2. Without prejudice to point**s** (b)**, ~~and~~ (c) and (d)** of Article 6(1)**, ~~and~~** points (a), **(c), (~~e~~d) and ~~to~~** (**~~e~~ef**) of Article 6**~~(2)~~b and Article 6~~(2a)~~c**, 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**b**~~(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.

4. Union or Member state law may provide in accordance with Article 11 that the electronic communications metadata is retained for a limited period that is longer than the period set out in this Article .

Article 8

Protection of ***end-users' terminal equipment*** *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 a~~n 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~~ one or more providers of the information society service provided that conditions laid down in Article 28, or where applicable Article 26, of Regulation (EU) 2016/679 are met~~.~~; or**

(da) it is necessary to maintain or restore the security of information society services or terminal equipment of the end-user, prevent fraud or detect technical faults for the duration necessary for that purpose; or

(e) it is necessary for a ~~security~~ software update provided that:

(i) ~~security~~ such update~~s~~ ~~are~~ is necessary for security reasons and does 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 terminal equipment when an end-user makes an emergency communication either to the single European emergency number '112' or a national emergency number, in accordance with Article 13(3).** ~~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 **or maintaining** 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,**

(d) **it is necessary for providing a service requested by the end-user.**

~~(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),** ~~T~~**t**he 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 2**a** 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 2**5**~~7~~ 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 parties from storing information on the terminal equipment of an end-user or processing information already stored on that equipment.~~

~~2. Upon installation, the software shall inform the end-user about the privacy settings options and, to continue with the installation, require the end-user to consent to a setting.~~

~~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)~~ (c)** to (e)**, (i) and (j)** of Regulation (EU) 2016/679 or a monitoring, inspection or regulatory function connected to the exercise of official authority for such interests. **~~To that end and under the same conditions, Union or Member State law may, inter alia, impose an obligation on the providers of electronic communication services to retain electronic communications data to safeguard one or more of the general public interests referred to in this paragraph, for a limited period of time longer than the one provided for in Article 7.~~**

1a. Article 23(2) of Regulation (EU) 2016/679 shall apply to any legislative measures referred to in paragraph 1.

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~~**115**] of the ~~[~~Directive **(EU) 2018/1972** ~~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 **and the exceptions set forth in Article 13~~(1), (1a) and (2).~~**

Article 13

Exceptions to ***presentation and restriction of calling and connected line identification in relation to emergency communications~~, to rejection of incoming calls and to provide access to emeregency services~~***

1. Regardless of whether the calling end-user has prevented the presentation of the calling line identification, where ~~a call is~~ **emergency communications are** 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.

1a. ~~**Notwithstanding Article 8(1), r**~~**Regardless whether the called end-user rejects incoming calls where the presentation of the calling line identification has been prevented by the calling end-user, providers of number-based interpersonal communications services shall override this choice, where technically possible, when the calling end-user is an organisation 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**, or otherwise address,** the elimination of the presentation of the calling line identification on a temporary basis, where end-users request the tracing of **unwanted,** malicious or nuisance calls.~~

3. Notwithstanding Article 8(1), ~~R~~regardless of whether the end-user has prevented access to the terminal equipment's Global Navigation Satellite Systems (GNSS) ~~capabilities~~ capabilities or other types of terminal equipment based location data through the terminal equipment settings, when a call is made to emergency services, such settings may not prevent access to ~~GNSS~~ such location data to determine and provide the ~~caller~~ calling end-user's location to ~~emergency services~~ an organisation dealing with emergency communications, including public safety answering points, for the purpose of responding to such calls.

Article 14

~~*Incoming call blocking*~~ ***Unwanted, malicious or nuisance calls***

1. 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**~~

1a. **Member States shall establish more specific provisions with regard to the establishment of transparent procedures and the circumstances where providers of number-based interpersonal communication services shall override, or otherwise address, the elimination of the presentation of the calling line identification on a temporary basis, where end-users request the tracing of unwanted, malicious or nuisance calls.**

2. **Providers of number-based interpersonal communications services** shall also provide the called end-user with the following possibilities, free of charge:

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

(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~~ **number-based interpersonal communications services** shall **obtain the consent of ~~inform end-users who are natural persons about the possibility to include their personal data in a publicly available directory and give~~ end-users who are natural persons ~~them~~ to include their personal data in the directory and**~~, consequently, shall obtain consent from these end-users~~ **for inclusion of such 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.

1aa. Notwithstanding paragraph 1, Member States may provide by law that the inclusion of personal data of an end-user who is a natural person in a publicly available directory can take place provided that he end-user who is a natural person shall have the right to object to such inclusion.

~~**1a. The Pproviders of number-based interpersonal communications services and/or providers of publicly available directory 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 ~~and/or providers of publicly available directory~~** shall inform end-users who are natural persons whose personal data are in the directory of **~~the available~~ any** search function**~~s~~ that is not based on name or number ~~of~~ in** 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 ~~and/or providers of publicly available directory~~** 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** ~~P~~providers **of number-based interpersonal communications services ~~and/or providers of publicly available directory~~** shall give ~~such~~ end-users **~~that are legal persons~~** the means to verify, correct and delete ~~such~~ data **included in a publicly available directory**.

3aa. Notwithstanding paragraphs 1aa to 3a, Member States may provide by law that the requirements under those paragraphs apply to providers of publicly available directories, in addition to or instead of, providers of number-based interpersonal communications services.

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.

4a. Where the personal data of the end-users of number based interpersonal communications services have been included in a publicly available directory before this Regulation enters into force, the personal data of such end-users may remain included in a publicly available directory, including version with search functions, unless the end-users have expressed their objection against their data being included in the directory or against the use of available search functions related to their data.

Article 16

***Unsolicited and ~~D~~direct marketing** communications*

1. Natural or legal persons ~~may~~ **shall be prohibited from** us**eing** electronic communications services for the purposes of sending **~~or presenting~~** direct marketing communications to end-users who are natural persons ~~that~~ **unless they** have given their consent.

2. **Notwithstanding paragraph 1, ~~W~~w**here 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~~ purchase** 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 **of such end-users' contact details** and**, if that end-user has not initially refused that use,** each time **~~that~~ when a natural or legal person~~s~~ sends a message to that end-user for the purpose of ~~such~~ direct marketing ~~communication is sent or presented~~**.

2a. Member States may provide by law a set period of time, after the sale of the product or service occurred, ~~that~~ within which a natural or legal person may use ~~its customer's~~ contact details of the end-user who is a natural person for direct marketing purposes, as provided for in paragraph ~~2 only where the sale of the product or service occurred not more than twelve months prior to the sending of an electronic message for direct marketing~~.

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**, each time a direct marketing communication is sent ~~or presented~~:**

(a) **reveal his or its identity and use ~~true~~ effective return addresses or numbers;**

(b) 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;**~~

(c) ~~**and shall** provide the necessary information for recipients **end-users who are natural persons** to exercise their right to **object or to** withdraw their consent, in an easy manner **and free of charge**, to receiving further **direct** marketing communications**;**~~

(d) **clearly and distinctly give the end-users who are natural persons a means to object or to withdraw their consent, free of charge, at any time, and in an easy and effective manner ~~and free of charge~~, to receiving further direct marketing communications, and shall provide the necessary information to this end. This means shall also be given at the time of collection of the contact details according to paragraph 2. It shall be as easy to withdraw as to give consent.**

~~**6a. Advertisements on a website that are displayed to the general public and do not require any contact details of end-users should not be subject to this article.**~~

~~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 s~~S*upervisory authorities*

0. Each Member State shall provide for one or more independent public authorities meeting the requirements set out in Articles 51 to 54 of Regulation (EU) 2016/679 to be responsible for monitoring the application of this Regulation ~~('supervisory authorities'), in accordance with paragraphs 1 and to 1aa of this Article~~.

Member States may entrust the monitoring of the application of Articles 12 to ~~14~~16 to the supervisory authority or authorities referred to in the previous subparagraph or to another supervisory authority or authorities having the appropriate expertise. ~~As far as processing of electronic communications data qualifying as personal data is concerned, the supervisory authority referred to in the previous subparagraph shall be responsible for monitoring the application of those articles Regulation (EU) 2016/679 shall be responsible for monitoring the application of this Regulation. Chapters VI and VII of Regulation (EU) 2016/679 shall apply *mutatis mutandis*~~.

~~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 Sates shall entrust the monitoring of the application of Chapter III of this Regulation to the supervisory authority or authorities referred to in paragraph 1 of this Article or to another supervisory authority or other supervisory authorities having the appropriate expertise and independence.~~

~~1aa. Notwithstanding paragraph 1a, Member States may entrust the monitoring of the application of Articles 12 to 14 of this Regulation to another supervisory authority or other supervisory authorities having the appropriate expertise.~~

1ab. The supervisory authorities ~~referred to in paragraphs 1 and to 1aa 0~~ shall have investigative and corrective powers, including the power ~~to provide remedies pursuant to article 21(1) and~~ to impose administrative fines pursuant to article 23.

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. **Where ~~T~~t**he supervisory ~~authority or~~ authorities ~~referred to in paragraphs 1 and to 1aa 0 shall cooperate with~~ **are not the supervisory authority~~ies responsible for monitoring the application of Regulation (EU) 2016/679, they shall cooperate with the latter and,** whenever appropriate**,** with national regulatory authorities established pursuant to ~~the~~ ~~[~~Directive **(EU) 2018/1972** ~~Establishing the European Electronic Communications Code]~~ **and other relevant authorities**.

Article 19

European Data Protection Board

1. The European Data Protection Board, established under Article 68 of Regulation (EU) 2016/679, shall have ~~**competence**~~ **the task** to ~~ensure~~ **contribute to** the consistent application of **Chapters I ~~and~~ II and III 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**~~**To that end,** ~~**T**~~the Board shall ~~also~~ have the following tasks:

~~**(aa) monitor and ensure the correct application of this Regulation in the cases provided for in Articles 64 and 65 of Regulation (EU) 2016/679 without prejudice to the tasks of national supervisory authorities;**~~

(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 Chapters I~~, and~~ II and III** 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 0 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 order to facilitate cooperation, including exchange of information, between supervisory authorities referred to in paragraph 0 of Article 18 and/or the supervisory authority responsible for monitoring the application of Regulation (EU) 2016/679 ~~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~~;**

(da) **issue guidelines, recommendations and best practices in accordance with point (b) of this paragraph to assess for different types of electronic communications services the moment in time of receipt of electronic communictions content;**

(db) **issue guidelines, recommendations and best practices in accordance with point (b) of this paragraph on the provision of consent in the context of Articles 6 to 6b and 8 of this Regulation by end-users ~~wjp~~ who are legal persons ~~and~~ or in an employment relationship;**

(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 0 of Article 18;~~

~~(g) promote common training programmes and facilitate personnel exchanges between the supervisory authorities referred to in paragraph 1 0 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 0 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 closely cooperate with the supervisory authorities referred to in Article 18(0) for the purposes of the application of this Regulation. 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

Cross-border *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 0)** 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~~ **right to an effective judicial remedy in relation to any infringement of his or her rights under this Regulation, the right to lodge a complaint with a supervisory authority and the right to an effective judicial remedy against any decision of a supervisory authority**.

~~**1a. End-users who are natural persons shall also have the right to representation provided for in**~~

Articles 77-80 of Regulation (EU) 2016/679 shall apply *mutatis mutandis*.

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,~~ Article 83 ~~Chapter VIII~~** of Regulation (EU) 2016/679 shall apply ***mutatis mutandis*** 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;

~~**(a) the obligations of the provider of software enabling electronic communications, pursuant to Article 10;**~~

(b) the obligations of the providers of publicly available directories pursuant to Article 15;

(c) 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~~**118** of ~~the~~ [Directive **(EU) 2018/1972** ~~establishing the European Electronic Communications Code~~]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011[10].

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

[10] 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).

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.

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~~ **Without prejudice to paragraph 3, this** Regulation shall apply from [~~25 May 2018 one year~~ **24 months from the date of entry into force of this Regulation**] .

[3. Until other specific union legislation on detection, deletion or reporting material constituting child pornography has entered into force, ~~T~~this Regulation shall not apply to the processing of electronic communications data by a provider of number-independent interpersonal communications services for the sole purpose of detecting, deleting ~~and~~ or reporting material constituting child pornography as defined in Article 2(c) of Directive 2011/93/EU, if:

~~**(a) that provider started such processing prior to the date set out in paragraph 1.**~~

~~**(b)**~~ **the ~~technology used~~ processing meets all of the following characteristics:**

(i) it creates a unique, non-reconvertible digital signature ("hash") of material attached to electronic communications for the sole purpose of comparing that hash with a database containing hashes of material previously reliably identified as constituting child pornography;

(ii) ~~it erases non-matching~~ electronic communications data and hashes of material attached to electronic communications are erased immediately after comparison with the database, except in the cases where material constituting child pornography has been detected by virtue of a hash;

(iii) it limits ~~to the maximum extent technically possible the rate~~ the probability of erroneous detection of material constituting child pornography to at most 1 in 50 billion;

~~**(iv) it does not store electronic communications data, except in the cases where material constituting child pornography has been detected by virtue of a hash.**~~

~~**4. Paragraph 3 shall cease to apply on** [xx].~~**]**

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*