

Mr. Jean-Claude Juncker, President
Mr. Andrus Ansip, Vice-President
Mr. Günther Oettinger, Commissioner
European Commission
Rue de la Loi 200
B-1049 Brussels

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15 December 2016

RE: Consumers need robust e-Privacy legislation

Dear President Juncker,
Dear Vice-President Ansip,
Dear Commissioner Oettinger,

We strongly welcome the Commission's determination to revise and update the e-Privacy Directive (ePD), despite continuous calls for repeal coming from different industry sectors.

As we reach the final stages before the adoption of the Commission's proposal on the revision of the ePD, announced for January 2017, we would like to stress a few important points from a consumer perspective:

1. The ePD is a fundamental piece of legislation for the protection of consumers' privacy.

The General Data Protection Regulation (GDPR) represents a significant step forward in the right direction. Once it becomes applicable, the GDPR will bring great improvements for consumers. However, the GDPR does not address all the elements that are essential to protect consumers' privacy in digital communications. Strong e-Privacy legislation is also necessary.

The ePD is the only legal instrument that translates Article 7 of the European Charter of Fundamental Rights on the protection of private life and communication into specific secondary EU law. It provides an additional layer for the protection of personal data, complementing and particularising the general data protection rules.

In the absence of the ePD, issues of concern such as data mining and tracking/profiling of users would grow even larger in scale and the confidentiality of our communications would be unprotected. It is of utmost importance that the Commission comes up with an ambitious proposal that puts citizens/consumers privacy protection at the forefront.

We understand that the new instrument will be a Regulation. We support this approach. A Regulation is necessary to ensure consistency and facilitate the interplay with the GDPR. It is also the best way to guarantee a harmonised high level of protection all across the EU.

2. The scope of the proposal must cover all Electronic Communications Services and, where appropriate, digital services in general

The scope of the current ePD must be broadened to cover all Electronic Communications Services (ECS), as defined in the recent proposal for a European Electronic Communications Code. Over-the-top services ("OTTs") must offer the same level of privacy protection as traditional telecoms services when they provide communications services such as Voice over IP and instant messaging.

Moreover, where appropriate, the scope of the new instrument should reach beyond ECS and cover any digital service that processes consumers' electronic communications data. For example, GPS location data and Wi-Fi network location data used by digital services in mobile devices is even more accurate than traffic and location data collected by telecoms providers and should therefore be covered in the future e-Privacy instrument. Anybody that uses electronic communications services to send direct marketing communications or to place or collect information related to or stored in end users' devices must also clearly fall under the scope of the updated rules.

3. We need strong measures to guarantee privacy by design and tackle the widespread problem of online tracking.

The new instrument should build upon the 'Privacy by design' and 'by default' principles introduced in the GDPR. Consumers' behaviour and activities must not be tracked without their consent, no matter the technological means deployed to carry out the tracking. Furthermore, the settings in end users' equipment and software applications should come configured 'out of the box' to prevent tracking of consumers' behaviour and activities by third parties.

The [2015 Data Protection Eurobarometer](#) showed that a majority of Europeans is uncomfortable with internet companies using information about their online activity to tailor advertisements. A [report](#) published by the Norwegian Data Protection Authority in January 2016 showed that a large majority of users (73%) would prefer random advertising to targeted advertising (27%).

Consumers must have the possibility to use online services without being under constant commercial surveillance. They should not be faced with 'take it or leave it' situations like the ones currently created by the so called 'cookie walls'.

The obligation to obtain 'prior consent' for the collection and use of metadata, content data and location data for specific purposes, such as the provision of value added services, should remain a key principle. However, there must also be clear limitations regarding the purposes for which communications data can be used, especially when it comes to advertising and profiling. It should be explicitly prohibited to bundle consent to cover both value-added services and marketing/advertising purposes.

We kindly ask you to take these points into consideration to make sure that the upcoming proposal meets consumers' needs and expectations. A robust legal framework that protects consumers' fundamental rights to privacy and data protection is necessary to ensure that they can safely benefit from the Digital Economy and trust online services.

We remind at your disposal for any questions you might have and to further discuss any issues related to the upcoming proposal.

Yours sincerely,

Monique Goyens
BEUC Director General