

'DG CNECT
Meeting between Commissioner Breton and Mr Wiewiorowski, European Data
Protection Supervisor
Brussels, 13/02/2020, 09:00-10:00

BRIEFING NOTE *(Commission Internal)*

Scene setter/Context of the meeting

- You are meeting Mr Wojciech Wiewiórowski, the newly appointed (5 December 2019) European Data Protection Supervisor (now onwards, EDPS) at his request.

[REDACTED]

out of scope

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

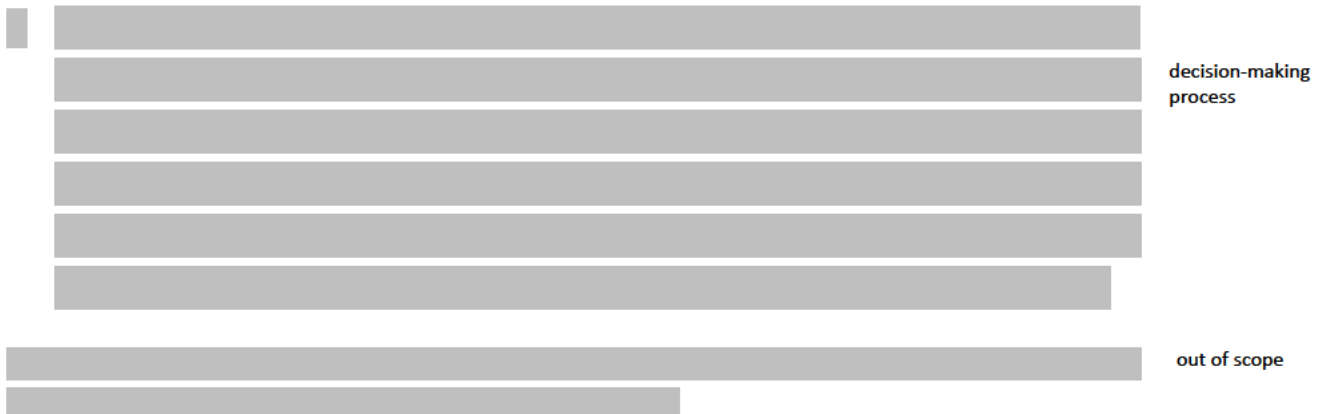
out of scope

- The **EDPS** had initially issued his **advice on the ePrivacy review** in a Preliminary Opinion (5/2016) and on the European Commission's proposed Regulation in Opinion 06/2017. The latest EDPS advice was provided in *the EDPS recommendations on specific aspects of the proposed ePrivacy Regulation* dating from 5 October 2017,⁴ according to which:
 - any processing of communications data must be based on a legal ground under the ePrivacy Regulation (Article 6, recital 5);
 - legal grounds under the ePrivacy Regulation must not include legitimate interest;

³ [REDACTED]

⁴https://edps.europa.eu/sites/edp/files/publication/17-10-05_edps_recommendations_on_ep_amendments_en.pdf

- confidentiality of communications data shall be ensured 'at rest' and for machine-to-machine communications (Article 5);
- the protection of data related to the terminal equipment deserve equally high protection; appropriate definitions are crucial to implement the protection of the fundamental rights (Article 4);
- replacement of reference to the definitions of the European Electronic Communications Code (Code) by self-standing definitions (Article 4) and definition of 'user' and/or 'end-user' and 'metada';
- consent must have the same meaning as in the GDPR, including be freely given and specific (Articles 6, 8 and 9); restrictions on the rights should be limited in scope (Article 11); weakening of confidentiality and integrity of communications should be prohibited (Article 17);
- supervision powers should be granted to the Data Protection Authorities (Article 18); and protection against unsolicited communications should be comprehensive (Article 16).





out of scope

[ePrivacy]

⁵ EDPS Planning Unit yearly takes contact with Commission services in order to get an idea on the number of initiatives they will be required to comment upon

- The Commission assists the Croatian Presidency so that the Presidency will be able to table a revised text that gets support in the Council. This will allow the trilogue negotiations to begin and the ePrivacy Regulation to be adopted. Croatian State Secretary Josip Bilaver stated in the LIBE Committee meeting of 21 January 2020 that the Croatian Presidency would present a new compromise text in February.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Is the Commission planning to withdraw the proposal, and if so when will you table a new one?

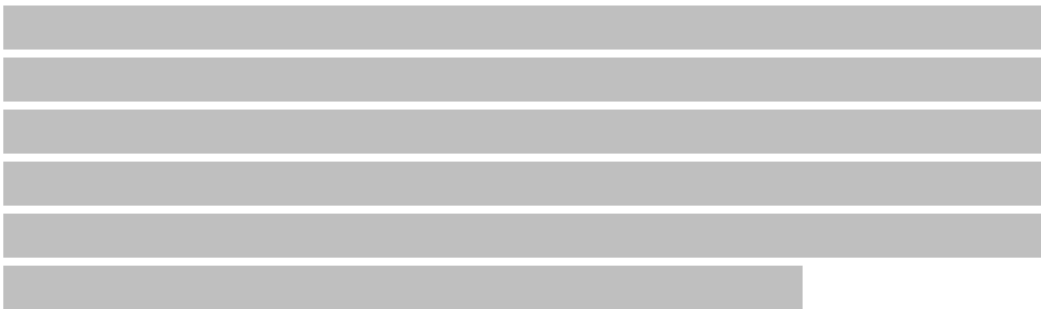
- The Commission proposal has been discussed in the Council for almost 3 years. The Parliament has been ready to start discussing the file with the Council since October 2017.
- The Commission is not planning to withdraw the proposal. The Croatian Presidency aims at working towards a General Approach in spring, as announced by the Croatian State Secretary in the LIBE committee of 21st January 2020. The Commission continues to support the Croatian Presidency with a view to finding an agreement on an ePrivacy framework that is fit for purpose.

What is the Commission's point of view on the Croatian Presidency non-paper?

- The main remaining issues to be solved under the Croatian Presidency are: an appropriate solution for the purpose of preventing child sexual abuse, and the issue of making access to a website or service conditional on the user's consent to cookies (cookie walls).
- Concerning the child sexual abuse issue, the Finnish Presidency had included an additional permanent ground for the processing of electronic communications data for fighting child sexual abuse online. [REDACTED]

decision-making
process

- [REDACTED]

- In addition, the Croatian Presidency wants to examine the possibility of aligning the legal grounds for processing of electronic communications data with the legal grounds provided by GDPR, i.e. to include the legal grounds for processing of personal data of the GDPR into the ePrivacy Regulation. According to the Presidency, this change would address the current complex division of Art.6 to 6c and would address the criticism that the ePrivacy provisions derogate from the GDPR.
- The Commission's position remains that of its proposal, which ensures a strong protection of the confidentiality of electronic communications with a limited number of possibilities of permitted processing in Article 6. The Commission also remains committed to the protection of information in terminal equipment in accordance with Article 8 of its proposal. In trilogue negotiations, the Commission will act as an honest broker helping to find reasonable compromises between Parliament and Council.
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decision-making
process
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personal data

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