



BRIEFING COMMISSIONER BRETON



Basis (CAB BRETON/20) - Berlin mission, 30-31 January 2020

DG CONNECT – GROW - DEFIS, EUROPEAN COMMISSION

ix. e-Privacy

Scene-setter / DE Position:

The Finnish Presidency did not manage to achieve a general approach in November 2019, which is required to start negotiations with the Parliament. The Croatian Presidency will present a new text and identified two main issues to be resolved: cookie walls and child protection.

[REDACTED]

decision-making
process

[REDACTED]

[REDACTED]

ongoing
investigations

Objectives:

Seek Germany's support to the Croatian Presidency to find a compromise for renewing the Council negotiation mandate, which would allow the upcoming German Presidency to start the negotiations with the Parliament and conclude them.

Line-to-take:

- The Regulation is urgently needed, since it will modernise the current Directive and provide privacy protection to all electronic communications of individuals. It will also ensure a level-playing field between all providers of electronic communications services, regardless of whether they are telecom providers or Over-the-Top service providers ("OTTs"), such as WhatsApp.
- If a general approach is achieved under the Croatian Presidency, then trilogues can be concluded under the German Presidency. To this end, Germany's continued close cooperation with the Croatian Presidency will be instrumental.

[REDACTED]

personal data

vi. E-Privacy

Background:

The objective of the Commission proposal is to adapt the current rules on the confidentiality of electronic communications to the development of new technologies, applications and new areas of use by citizens.

The current ePrivacy Directive, from 2002, applies only to services offered by traditional telecommunications operators. The proposal offers new possibilities for processing of electronic communication data to foster innovation. It provides that the rules will also apply to over-the-top (OTT) communications services (like WhatsApp) ensuring a level playing field.

The Regulation aims to ensure the protection of information stored in user's terminal equipment, which is important in order to prevent that users are tracked online against their will. The proposed rules also protect against direct marketing communications, requiring users' prior consent.

The Commission adopted the proposal in 2017. The EP's LIBE Committee obtained its negotiation mandate in on 23.10.2017. At the Coreper on 22 November 2019 the Council failed to agree on a General Approach. The ePrivacy Regulation progress report was discussed and adopted at the TTE Telecom Council on 3 December 2019. The Croatian Presidency identified as the main issues to be solved: an appropriate provision for the purpose of preventing child sexual abuse; and the issue of conditionality between access to a website or service and the user's consent to cookies (cookie walls).

Defensives:

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 Finnish Presidency has made good progress on the ePrivacy Regulation, but some concerns and differences of opinion remain among Member States.
- The Commission continues discussions with Member States and works closely with the Croatian Presidency so that the Presidency will be able to table a revised text that gets support in the Council.

Is the the ePrivacy Regulation an obstacle to innovation, data economy, IoT and AI? Does it strike the right balance between privacy protection and innovation?

- New technologies such as IoT and AI bring can bring important benefits to our society and economy. The regulation will not impede their development. In fact, in the case of IoT, it ensures that the confidentiality of communications of IoT providers and users is protected.
- It is essential to ensure the trust of citizens and businesses in innovative technologies. To this end, respect for privacy protection is a prerequisite.
- The proposed Regulation does not change the current legal framework but harmonizes the rules, while aiming to keep a balance between privacy protection and innovation.



out of scope