

DG CNECT
Meeting between Commissioner Thierry Breton and Ms Birgit Sippel, MEP (DE, S&D)
Strasbourg, 18 December, 11:00
ePrivacy Regulation

BRIEFING NOTE

Scene setter/Context of the meeting:

You are meeting with Ms Birgit Sippel, (DE, S&D), rapporteur for the ePrivacy Regulation in the European Parliament.

Ms Sippel has regularly encouraged the Council to finish its work and move on to negotiations with the Parliament on this file, in order to avoid a risk of lack of harmonisation under the currently applicable ePrivacy Directive and a risk of lowering the level of protection for citizens.

Following the TTE Council on 3 December, Ms Sippel commented to the *Süddeutsche Zeitung*: *"If the European Commission really withdrew its proposal for an e-privacy regulation, that would be a capitulation to the powerful industrial lobby and the surveillance omnipotence fantasies of some European governments."*

The **LIBE Committee** adopted its position in October 2017 and the Plenary granted a mandate to the Rapporteur (who has been replaced by Ms Birgit Sippel (S&D, DE)) to start negotiations with the Council. The LIBE position was reconfirmed in October 2019.

The European Parliament's position in many aspects follows the Commission's proposal, for instance on limited grounds for processing of electronic communications data. In some instances, the Parliament proposes stronger protection of users' rights. The EP position forbids so-called "cookie walls", which means that websites cannot make access to their content conditional on the acceptance of cookies. The Parliament also obliged browsers to have default privacy settings that refuse cookies (*more details in the Background section*).

Objective of the meeting:

- This is an introductory meeting to build a basis for future good cooperation.
- Reassure Ms Sippel that the Commission remains committed to ensuring the privacy of communications.

KEY messages

- I am grateful for your work on this important file and look forward to constructive cooperation.
- The Commission remains fully committed to ensuring the privacy of communications. This is important for our citizens and our business and we need to find a viable solution as soon as possible.
- I intend to analyse the issues and discuss with the Member States their concerns which were raised in the Telecom Council earlier this month.
- I will then work together with the Croatian Presidency and the College of Commissioners to assess what is the best way forward to make sure that we make progress in this file.

Key questions to Ms Sippel

- How do you see the situation in the European Parliament on this file?
- What are the positions of the new LIBE Members, in particular the new Shadows with regard to the issues being debated in the Council, in particular with regard to child protection, data retention and cookie walls?
- What are the issues for the European Parliament on this file?

Defensives / Q&A

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 and despite progress having been made, differences of opinion remain among Member States.
- The Commission will continue discussions with Member States and work closely with the incoming Croatian Presidency with a view to finding very soon an agreement on an ePrivacy framework that is fit for purpose.
- It is reassuring that a majority of Member States shares my view that European citizens expect progress on this important file.

IF PUSHED: But you did mention a new proposal in the Council meeting?

- I am still analysing the different issues and my statement in the Council was not to start from scratch but to work closely with the incoming Croatian Presidency.
- The European Commission is working with the Council Presidencies to assist them in finding compromises. This is a regular part of the legislative process and the reference to a “proposal” should therefore not necessarily be understood as referring to a new Commission proposal.

Why did the Commission not prohibit cookie walls?

- For a user's consent to be in accordance with the data protection rules (i.e. GDPR definition of consent), it must be freely given by clear affirmative action.
- The user should be able to refuse or withdraw consent without detriment. Websites will have to respect consumers' choice regarding acceptance or refusal of cookies or other identifiers.

- However, many websites are financed by advertisement. This is the case for instance for many large and small publishers, which are essential for media pluralism in the EU.
- It will be the role of the European Data Protection Board (EDPB) to interpret the exact impact of the enhanced (GDPR) consent to cookie-wall practices.

Why is the ePrivacy Regulation necessary?

- A regulatory framework for ePrivacy:
 - will enhance protection of individuals' rights and at the same time give providers more possibilities to process electronic communications data than under the current Directive.
 - will enhance consistency with the General Data Protection Regulation (GDPR) and ensure a more coherent implementation across the European single market, alleviating compliance burden for businesses.
 - will provide for a level playing field among all electronic communications service providers, enabling them to innovate.
 - will strengthen enforcement powers and foresees significant fines in case of a breach of the rules.
- The current ePrivacy Directive is not fit for the future. Nevertheless, absent a new Regulation, it continues to apply.
- As from December 2020, by virtue of the EU Electronic Communications Code definitions, the ePrivacy Directive will in any event also cover over-the-top (OTT) communications services (like webmail and messaging services).
- The proposed ePrivacy Regulation provides for rules adapted to all electronic communications service providers, contrary to the 2002 Directive. Notably, it allows for more possibilities to process electronic communications data (e.g. for security purposes).

Background information

The main changes proposed by the European Parliament in the LIBE report (compared to the Commission Proposal):

- a) broadening the legal ground to process electronic communication data for security purposes (in Article 6)
- b) prohibition of cookie-walls (access to a webpage cannot be made conditional upon consent of the users to access/store information in their terminal equipment) (in Article 8) *(the Council text would allow cookie-walls to some extent);*
- c) amendments (in Article 8) to the possibility to access/store information for web audience measuring conducted by a third party on behalf of the information society service provider, or for statistical or scientific purposes *(the Council proposed a similar amendment);*
- d) introduction of an exception for security updates in the provision on the protection of terminal equipment (Article 8) *(The Council proposed a similar amendment);*
- e) Privacy by default software settings (in Article 10) to prevent other parties to store or process information in the terminal equipment *(the Commission proposed to prompt the user with the available settings, without a pre-ticked setting; the Council deleted this provision)*

State of play in the Council:

During the TTE Council on 3 December, ministers took note of the Presidency's progress report on the file and expressed broad appreciation for the commitment of the Finnish Presidency to work towards the adoption of a general approach.



decision-making
process

The Commission thanked the Finnish Presidency for its substantial efforts and underlined its continued commitment to the objectives of the ePrivacy

Regulation. The Commission remains convinced that the updating of the regulatory framework governing privacy and confidentiality of electronic communication services is necessary. In light of the difficulties in reaching a general approach in Council, the Commission committed to working closely with the incoming Croatian Presidency to put a new text proposal on the table, with a view to reaching swift progress towards a modernised and balanced framework.

Curriculum vitae:

personal data

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BASIS request ID: (CAB BRETON/3)
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