

24 September 2021
Brussels

Subject: Final push needed for a strong ePrivacy Regulation

Dear Mr Tomas Tisler and Mr Ales Krevsel, on behalf of the Slovenian Presidency of the Council,

Dear Ms Birgit Sippel MEP,

Dear Mr Peter Eberl, Deputy Head of Unit Cybersecurity and Digital Privacy at DG CNECT,¹

cc: Dear Members of the WP TELE

The undersigned organisations reiterate our support for the much-needed efforts to upgrade Europe's ePrivacy legislation.

Almost five years after the ePrivacy Regulation was proposed, Big Tech has increased its dominance in the online advertising industry, to the detriment of both publishers and the privacy of Europeans. Furthermore, news such as the recent Pegasus Project revelations² have evidenced the need to mandate privacy by design and by default for all, or there will be no privacy for anyone. This scandal and many others also confirm that a successful outcome of the ePrivacy trilogue negotiations must strengthen fundamental rights and the rule of law against potential unlawful interference with the private communications of Europeans.

We call on the Slovenian Presidency, the EP Rapporteur, and their counterparts to conclude the trilogue negotiations on this ever-important reform. We emphasise the importance of the following issues in your discussions:

1. As an absolute red line, this reform must at the very least **maintain the level of protection provided by the existing ePrivacy Directive**. This process should, however, **seek to upgrade** the legislation to ensure that privacy and confidentiality of communications are protected at all times.
2. Given the experience of the implementation and enforcement of the General Data Protection Regulation (GDPR), **we strongly suggest that the Data Protection Authorities should have principal responsibility for the enforcement of the ePrivacy Regulation**. In addition, we suggest in the amendments prepared by [Access Now and noyb and endorsed by the EDRi network](#), a number of **clarifications to explain how the enforcement mechanism should work in practice** to address some shortcomings of the GDPR that should not be reproduced in the context of the enforcement of the ePrivacy Regulation.
3. **A solution is needed that puts an end to the bombardment of users with consent demands or 'cookie banners'**. These interactions are being used to cheapen consent and often

¹ We encourage the circulation of this open letter among the WP TELE and negotiating teams along with [the proposal for amendments prepared by Access Now and noyb and endorsed by the EDRi network](#).

² <https://www.euractiv.com/section/cybersecurity/news/pegasus-shows-no-backdoor-only-lets-the-good-guys-in-proton-ceo-says/>

employ deceptive interfaces. In order to protect people from abusive and invasive tracking, including across devices, **we are calling for legally binding signals (similar to Do Not Track signals in browsers)**. These signals could be developed and made legally binding via delegated acts by the European Commission, after a positive binding opinion of the European Data Protection Board (EDPB).

4. We urge you to ensure a **ban on "tracking walls"**, as these practices coercively require forced 'consent' to accept online tracking for advertising purposes as a condition of access to certain online services. As negotiators, you have the opportunity to create legal certainty for companies and simplify people's online experience by putting an end to this practice. The binding signals we recommend in point 3 would replace this invasive practice to both ensure better privacy protection and easier navigation of websites.
5. We recall the need for **strong consent requirements to be applied in line with the GDPR**. We **oppose any attempt to introduce new legal grounds such as legitimate interest for processing of communications data or for further processing for compatible purposes**, as these changes would undermine the core of the ePrivacy Regulation.
6. We call for strong mandatory requirements for the application of the **privacy by design and by default principles**. By ensuring privacy by design and by default we would be able to protect privacy and confidentiality of communications without requiring any intervention from the end-user. This principle aligns with Article 25 GDPR as well as with EU legislation protecting consumers from faulty products
7. **We urge you to reject any attempts to bypass the CJEU case law on data retention**, which would result from introducing broad exemptions for national security or public security.

We look forward to working constructively with the negotiators and welcome your willingness to move this important reform forward. Ahead of your next trilogue, we urge you to bring in these improvements to the text to adopt an upgraded and improved ePrivacy Regulation.

We stand ready to support your work.

Yours sincerely,

Diego Naranjo,
Head of Policy
European Digital Rights (EDRi)

On behalf of
Access Now
Amnesty International
Bits of Freedom
Direitos Digitais
Državljan D / Citizen D
epicenter.works
Deutsche Vereinigung für Datenschutz e.V. (DVD)
Douwe Korff - Emeritus Professor of International Law
European Digital Rights (EDRi)
IT-Pol Denmark
Netzwerk Datenschutzexpertise
noyb
Open Rights Group



Privacy International
Panoptikon
Xnet
Vrijsschrift
Wikimedia France