



## PRESS RELEASE

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### **ePrivacy rules should be smarter, clearer, stronger**

A new proposal on ePrivacy should guarantee **confidentiality** of communications, offer **clarity** and **complement** the General Data Protection Regulation (GDPR) said the European Data Protection Supervisor (EDPS) as he published his [Opinion on the review of the ePrivacy Directive](#).

**Giovanni Buttarelli, EDPS, said:** *"The confidentiality of online communications by individuals and businesses is essential for the functioning of modern societies and economies. The EU rules designed to protect privacy in electronic communications need to reflect the world that exists today. By preserving and not reducing the high level of protection offered by the current ePrivacy Directive and harmonising some specific provisions to complement the GDPR, the EU can reinforce the confidentiality and integrity of our electronic communications."*

In his Opinion, the EDPS says that the scope of new ePrivacy rules needs to be broad enough to cover all forms of electronic communications irrespective of network or service used, not only those offered by traditional telephone companies and internet service providers. Individuals must be afforded the same level of protection for all types of communication such as telephone, Voice over IP services, mobile phone messaging app, Internet of Things (machine to machine).

The updated rules should also ensure that the confidentiality of users is protected on all publicly accessible networks, including Wi-Fi services in hotels, coffee shops, shops, airports and networks offered by hospitals to patients, universities to students, and hotspots created by public administrations.

Any interference with the right to confidentiality of communications is contrary to the European Charter of Fundamental Rights.

No communications should be subject to unlawful tracking and monitoring without freely given consent, whether by cookies, device-fingerprinting, or other technological means. Users must also have user-friendly and effective mechanisms to give, or not give, their consent. In order to better protect the confidentiality and security of electronic communications, the current consent requirement for traffic and location data must be strengthened.

The existing rules in the ePrivacy Directive protecting against unsolicited communications, such as advertising or promotional messages, should be updated and strengthened and require prior consent of the recipients for all forms of unsolicited electronic communications.

A new provision for organisations to periodically disclose aggregate numbers indicating EU and non-EU law enforcement or government requests for information would offer some welcome transparency in the sensitive, complex and often contentious area of government access to communications.

The new rules should complement, and where necessary, specify the protections available under the GDPR. They should also maintain the existing, higher level of protection in those instances where the ePrivacy Directive offers more specific safeguards than in the GDPR.

## **Background information**

The rules for data protection in the EU institutions, as well as the duties of the European Data Protection Supervisor (EDPS), are set out in [Regulation \(EC\) No 45/2001](#). The EDPS is a relatively new but increasingly influential independent supervisory authority with responsibility for monitoring the processing of personal data by the [EU institutions and bodies](#), advising on policies and legislation that affect privacy and cooperating with similar authorities to ensure consistent data protection.

**Giovanni Buttarelli** (EDPS) and **Wojciech Wiewiórowski** (Assistant EDPS) are members of the institution, appointed by a joint decision of the European Parliament and the Council. Assigned for a five year term, they took office on 4 December 2014.

**Personal information or data:** Any information relating to an identified or identifiable natural (living) person. Examples include names, dates of birth, photographs, video footage, email addresses and telephone numbers. Other details such as IP addresses and communications content - related to or provided by end-users of communications services - are also considered as personal data.

**Privacy:** the right of an individual to be left alone and in control of information about his or herself. The right to privacy or private life is enshrined in the Universal Declaration of Human Rights (Article 12), the European Convention of Human Rights (Article 8) and the [European Charter of Fundamental Rights](#) (Article 7). The Charter also contains an explicit right to the protection of personal data (Article 8)

**Processing of personal data:** According to Article 2(b) of Regulation (EC) No 45/2001, processing of personal data refers to "any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction." See the [glossary](#) on the EDPS website.

**ePrivacy Directive:** On 12 April 2016, the European Commission launched a [public consultation](#) on the existing ePrivacy Directive as well as possible changes to the existing legal framework. ePrivacy rules govern the processing of personal data in the electronic communications sector and clarify customers' rights to privacy and confidentiality in online communications. The Commission will use the feedback from the consultation to prepare a new legislative proposal on ePrivacy, which is expected by the end of 2016.

The European Data Protection Supervisor (EDPS) is an independent supervisory authority devoted to protecting personal data and privacy and promoting good practice in the EU institutions and bodies. He does so by:

- monitoring the EU administration's processing of personal data;
- advising on policies and legislation that affect privacy;
- cooperating with similar authorities to ensure consistent data protection.

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The EDPS [Opinion](#) is available on the EDPS website.

Questions can be directed to: [press@edps.europa.eu](mailto:press@edps.europa.eu)

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