



Joint Telecoms Industry Statement on the ePrivacy Regulation

The following Joint Statement by ETNO and the GSMA has been sent to EU national ministries and to the Member States' Permanent Representations to the EU.

Brussels, 5 November 2020 – Nearly 4 years ago, the European Commission released its proposed draft of the ePrivacy Regulation (ePR). In the intervening period, European telecommunications operators engaged with EU institutions to provide insights based on our experience serving as the backbone of the European digital economy. We continue to stand behind the objectives of the ePR – a high level of protection of the right to confidentiality of communications and of individual privacy, and the creation of a level playing field between digital services relying on data in the EU.

However, we have also voiced from the beginning that the Commission's proposal fails to provide the flexibility required to support proportionate and responsible data use by European companies and would therefore stymie data-driven innovation and the development of the European data economy. The draft text creates a restrictive framework for processing communications metadata that is neither future-proof, nor aligned with the GDPR.

Member States have worked hard to make the Commission's proposal more future proof but have not yet been in a position to reach a common position. We therefore regret that the recent approach taken by the German Presidency has not capitalised on the valuable work done by the previous Presidencies. Germany's proposed text fails to bridge the gap between protecting privacy and confidentiality and stimulating innovation in European service providers.

The German text reflects a persistent misconception that privacy and innovation cannot coexist. They can and must coexist for Europe to be able to step up and compete in the global data economy. Europe has an opportunity to solidify its global role as a beacon of responsible innovation, but only if policymakers create legal frameworks that enable new European products and services, rather than stifling or prohibiting them from the start.

As stakeholders to this legislative process, European telecommunications operators were aware of a growing consensus across several Member States to support the reintroduction of compatible further processing of pseudonymised metadata in Article 6 of the proposed text, reinstating a text that had already been discussed and widely accepted under previous presidencies. The Presidency of the Council, in its role as facilitator of a common and shared Council position¹, should take note of Member States' views and follow up with proposals

¹ The German Presidency's [website](#) even notes that "the Council Presidency has a neutral, mediating role. As an "honest broker" it must work towards compromises and solutions among the member states in the Council. This means that the national position takes a back seat in favour of a mediating role between the positions of the 27 EU member states."



that best reflect them. Instead, we must take note that the German Presidency has neglected to reflect the views of several Member States in favour of its own political stance.

Considering the above, we do not believe that a text that fails to reflect the views previously expressed by Member States should form the basis of a General Approach. We call on Member States to not support the German Presidency's proposal, which is not fit for future nor European competitiveness, and to continue to work together to secure a framework that is conducive to strengthening the EU's data economy. To this aim, we urge the reintroduction of the principle of further compatible processing subject to safeguards in Article 6, alongside the necessary improvements to further align the ePR with the GDPR's risk-based approach.

The competitiveness of European industry in the global economy is at stake. The ePR risks deepening the gap between Europe and other regions of the world as the new generation of industry depends on large amounts of data to compete.

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