

Mr Guy Verhofstadt – MEP
Chair - ALDE
European Parliament

B-1047 Brussels

Ref: BEUC-L-2017-288/MGO/cs

12 October 2017

Subject: E-privacy regulation – a key vote for European consumers

Dear Mr Verhofstadt,

In view of the ongoing negotiations and the upcoming vote in the Committee on Civil Liberties, Justice and Home Affairs (LIBE) on the proposal for a Regulation on Privacy and Electronic Communications (e-Privacy Regulation), BEUC and Test-Achats/Test-Aankoop would like to stress how important this Regulation is for consumers.

A robust e-Privacy Regulation is necessary to ensure that consumers can benefit from the Digital Economy and use online services without being forced to give up their privacy. It is a matter of protecting fundamental rights, but also of fostering privacy friendly innovation and strengthening consumer trust in digital services.

We are worried by the possibility that important elements of the Regulation are weakened in the final compromises. There are 3 critical points which we would like to underline and ask that you take into utmost consideration within your group:

1) All communications shall be confidential (Articles 5-6 of the Regulation).

Possibilities for processing electronic communications data without user consent shall be strictly limited. Processing based on “legitimate interests” or further processing for “compatible purposes” must not be allowed.

The protection of the confidentiality of communications, in line with Article 7 of the European Charter of Fundamental Rights, is one of the central elements of the e-Privacy Regulation and one of the main reasons why we need it. Communications metadata alone can reveal very sensitive information about a consumer’s life, such as the frequent locations that he or she visits. The e-Privacy Regulation must not allow broad use of such data without consent.

Allowing processing of communications data based on blurry legal grounds such as “legitimate interests” or “compatible purposes”, as we understand EPP and ECR are in favour of, would create a major loophole in the protection of the confidentiality of communications and undermine the very purpose of having specific e-Privacy rules. It would bring the level of protection below the current e-Privacy Directive, something which would be unacceptable and should be a red line for everyone.

2) Consumers must have the possibility to use online services without being under constant commercial surveillance (Articles 8-9).

It shall not be possible to monitor consumers' activities without their consent and they shall not be forced to give such consent when it is not necessary for the provision of the service.

This requires that users' terminal equipment is strongly protected against unauthorised intrusions. Once again, the Regulation must not allow access to terminal equipment or use of its processing capabilities without user consent based on "legitimate interests" or for "compatible purposes", and in particular not for behavioural advertising purposes, as suggested by some amendments put forward notably by EPP and ECR members. If any of that was allowed, a digital door to consumers' private lives would be wide open for the endless myriad of marketers, advertisers and commercial entities that populate the internet to exploit without even having to ask the consumer for permission to walk in.

We recognise the importance that advertising has for the funding of internet services and online content but we are deeply concerned by the extensive commercial surveillance that consumers are under. Consumers are under the wrong assumption that they are getting everything for 'free', while it is certainly not the case. Online tracking and profiling techniques are extensively used online to deliver advertising based on consumers' activities and try to influence their behaviour. This has huge privacy implications and can enable discriminatory practices and exclusion.

The Regulation should foster the development of privacy friendly advertising models, such as contextual advertising, which do not rely on tracking and monetising consumers' every move. It shall aim to give consumers the possibility to use online services without having to give up their privacy.

So-called 'tracking walls', which force a consumer to accept being tracked for behavioural advertising purposes in exchange for access to a website, must come down. This is the approach taken by the rapporteur, Ms Lauristin, in her draft report and by Ms. In't Veld in her amendments. We hope that your group will be able to support it in the final compromises. This is a critical point for consumers.

3) Privacy must be protected 'by default' (Article 10).

Consumers often do not have the knowledge required to navigate through the different privacy settings and most of the time simply stick to the default options provided by their devices.

The Regulation should mandate that the default settings of digital devices and services are configured to provide the highest level of privacy protection. This would allow consumers to rest assured that their privacy is protected from the outset. Moreover, to make sure that they are respected, choices made by the users in the privacy settings shall be binding and enforceable upon third parties.

We hope that your group will fully support the inclusion of the obligation to provide 'Privacy by default' in the final compromise text, in line with Ms. Lauristin's draft report and the amendments tabled by Ms. In't Veld. This would make consumers' lives much easier when it comes to protecting their privacy.

The latest Eurobarometer on e-Privacy¹ clearly showed support for the measures outlined above. Our demands are also fully in line with the [recommendations](#) of the European data protection authorities².

We kindly ask you to take our points into consideration and help ensure that the e-Privacy Regulation meets consumers' needs and expectations.

We remain at your disposal for any questions you might have.

Yours sincerely,



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BEUC



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Executive Director
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¹ [Flash Eurobarometer 443: e-Privacy](#)

² See also [Opinion 01/2017 of the Article 29 Working Party](#) and [Opinion 06/2017 of the European Data Protection Supervisor](#)