



The new ePrivacy Regulation – Does the data protection reform open the way for a digital Europe?

Introductory statement - Ingo Schwarz



Overview

- I. Modernising Data Privacy
 1. Aims of the EU data protection reform
 2. Stand of the EU-Legislation
 3. Draft: Regulation on Privacy and Electronic Communications (ePR) – Scope and relevance
- II. Consequences and demands – Point of view of the economy

1. Aims of the EU data protection reform

- Data protection law in the EU
 - modernisation
 - harmonisation
- Strengthening of the european digital economy / digital single market
- COM – further project: „Digital Service Act“

„A Union that strives for more“
Agenda for 2019 – 2024

2. Stand of the EU Legislation

GDPR

- In force since May 25, 2018

Creates

- legal uncertainty
- much more bureaucracy

ePR - Proposal

- COM: January 10, 2017
- EP: October 24, 2017
- Council / WP Tele
 - COREPER/Trilog?
 - not contemporary
 - **Regulation** or **Directive**?

Not achieved: GDPR and ePR - enter into force at the same time

3. Draft: ePR – Scope and relevance

Strengthening of the digital economy in Europe?

- ePrivacy
→ plays a fundamental role for a digital Europe
- A lack of an adopted ePrivacy
→ increase legal uncertainty

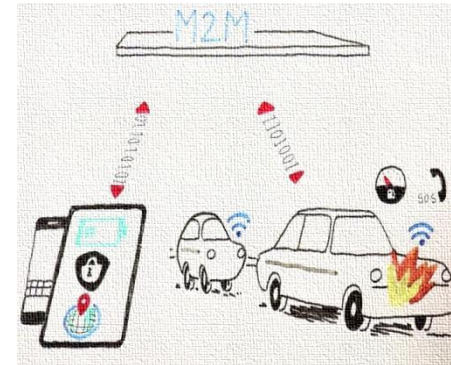


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3. Draft: ePR – Scope and relevance

ePR → Scope of Application

- Concerns the provision and use of electronic communications services
→ Processing of electronic communications content/metadata
- End-users terminal equipment protection of information
- Offering of a publicly available directory of end-users of electronic communications services
- Sending of direct marketing communications to the end-users



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Demands of the economy

Data protection law

- has to accompany and promote digitisation, not hinder it
- must consider the needs of the SMEs
- has to avoid
 - the increasing of data privacy requirements in the adaption legislation
 - especially high financial and HR costs
- Companies must be able to continue using well established and legitimate business models

ePR – Controversial subjects

Permission to process of electronic communication content

- Only with the consent of the requesting end-user?
- Even for the purpose of requested services?
 - Equal international standards?
 - Practicable?



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ePR – Controversial subjects

ePR-compliant data processing must be possible to continue on the legal basis of

contract

legitimate interests

consent

e.g. big data , IoT, internet platforms

ePR – Controversial subjects

- Compatible processing of electronic communications metadata?
- Processing of location data?
- Access to the „end-users terminal-equipment“ Information?
E.g. „third party cookies“
- Requirements on privacy setting options for Software /
for browser designer
- Direct advertising
 - only with consent?
 - even in cases of display advertising?



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To create a digital Europe - There will be still lots of work ahead of us.





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Vielen Dank für Ihre Aufmerksamkeit!

Thank you for your attention!