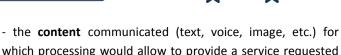## Would you like a cookie?

A question endlessly raised in our daily life online and for which the European Commission wants to provide citizens and businesses alike with the right safeguards. At stake, the respect for **private life** (article 7 of the European Charter of fundamental rights) and the protection of **personal data** (article 8) while fostering trust in the digital economy.

A recent **barometer** **on e-privacy** published in December 2016 highlighted, if need be, citizens' growing concern regarding the monitoring of their online activities and data. The recent revision of the **General Data Protection framework** (GDPR) adopted last spring was therefore not sufficient for the European Commission which chose to fine-tune this *lex generalis* by a revision of the rules specifically applicable to **electronic communications providers** having these data at hand (the 2002 **e-privacy directive**, revised in 2009). A clarification for the Commission, a redundant regulatory intervention for the industry but a much needed set of rules according to consumers' associations.

An extended scope

The main objective behind the proposal presented on **January 10th** is to align it with the GDPR and bring EU law up to date with the digital age. Accordingly, the new text builds on a widened **definition of electronic communications services** proposed in the ongoing revision of the telecommunications framework (proposal for a European Electronic Communications Code) which also covers **over-the-top players** providing **Voice-over-IP** (e.g. Skype) and **instant messaging** services (e.g. WhatsApp). Also covered: communication services provided by non-EU operators which will have to designate a representative in the Union.

Data, metadata and content

The **principle of confidentiality** (general prohibition to intercept, process and store data) is maintained. But the list of exceptions (**permitted uses**) would now be fine-tuned according to subcategories of data:

- the **content** communicated (text, voice, image, etc.) for which processing would allow to provide a service requested by the end-user and with its specific consent;
- the **metadata** linked to the process of the communication itself (location, duration, etc.) whose storage and process may also be considered for logistic purposes (billing, quality of service, etc.).

The cookie issue

The principle of confidentiality of the information stored in and related to the "**terminal equipment**" (e.g. smartphone, laptop) also remains and the permitted uses are more extensively specified. They would now go beyond technical requirements or the end-users' consent to include **web audience measuring** when carried out by the provider (not by a third party). The text also asserts the confidentiality of machine-to-machine communications (**M2M**).

Even more noteworthy, the Commission intends to address the flaws of the **consent rule** established in the current directive which has resulted in the end-users being "overloaded with requests to provide consent" online. The solution proposed: an obligation for "**software permitting electronic communications**" to ensure upon installation the possibility for users to define their preferred settings regarding cookies. This proposal raises a lot of criticism from browsers which would bear the burden and more generally from the whole industry, worried about the wide scope behind the notion of software.

While the new text usefully tries to provide answers, some provisions have raised a lot of additional questions from the sector and from consumers' rights advocates. These interrogations will now have to be answered by the European Parliament and the Council during the legislative adoption process. This is all the more important since the proposal is now a **regulation** and not anymore a directive. Meaning that these aspects will therefore not be clarified by national law, as it will be directly applicable upon adoption.

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Mid-term elections at the European Parliament: in dubious battle

Usually, the mid-term internal reshuffle of the leading positions in the European Parliament (EP) does not bring major changes, but last January campaign for the EP's presidency **disrupted the political landscape**.

At the beginning of the legislature in 2014, the centre-right EPP and the social-democrats S&D formed a "**grand coalition**". With 407 votes, they exceeded the simple majority necessary to adopt legislative acts (376 out of the 751 MEPs' votes). It enabled them to strike an [informal agreement][1] for the presidency according to which German S&D Martin Schulz would head the Parliament until 2017 when an EPP would replace him. Nevertheless this agreement did not prevent the S&D to hope for an extension of Martin Shulz's mandate, but the latter returned to national politics and their president Gianni Pittella became candidate.

Despite the S&D's strategy, EPP [Antonio Tajani] was [victorious] after four voting rounds **thanks to the Conservatives' ECR and Liberals' ALDE backing**. The newly elected President is a former European Commission's vice-president for transports (2008-2010) and industry (2010-2014).

The end of the "grand coalition" due to the EP's presidential campaign might lead to less homogeneous alliances and case-by-case majorities based on the groups' divisions. With only 359 votes, the EPP, the ECR and the ALDE fall short of the simple majority. To get it, they need some S&D or Greens' support, even more so if ECR or ALDE are divided. For instance on February 15th, the Parliament [approved] the EU-Canada trade agreement (CETA) thanks to the EPP, ECR and ALDE, and also to 95 of the 188 S&D's votes. Strategically **the EPP and the ALDE already concluded a political agreement, so-called "[pro-European coalition]"**, and invited the other pro-Europe groups to join them. Apart from specific votes such as the CETA, the ECR is not expected to do so.

In line with their coalition and in exchange of the ALDE's support for the EP presidency, the EPP left its chairmanship of the Conference of the committees' chairs to Liberal Cecilia Wikström, who chairs the Petitions committee. However the other leading positions did not change much since they are allocated among political groups and national delegations mainly on a proportional basis, which does not prevent some political negotiations. **All committees' chairs remain in the same political groups**.

The repartition by nationalities remains uneven with most management positions in the hands of few Member States. Yet, Eastern and Central Europe has slightly increased its presence by gaining two committees' presidencies to the detriment of Mediterranean countries and one EP vice-presidency. **Despite Brexit, British MEPs** (two S&D and one ECR) **have been re-elected committee chairs** (Internal market, Civil liberties, Development).

The European Parliament is currently negotiating important packages (corporate tax, telecoms, energy, etc.). The lack of a grand coalition is likely to lead to **lengthier debates and harder-to-get compromises.**

[1] Published by the EU press in January 2017.

EU public consultations*

Infrastructures	[Mid-term evaluation of the Connecting Europe Facility]	27.02.2017
Trade	[Multilateral reform of investment dispute resolution]	15.03.2017
Finance	[Capital markets union mid-term review]	17.03.2017
Taxation	[Reform of VAT rates]	20.03.2017
Taxation	[VAT system for business to business intra-EU transactions on goods]	20.03.2017
Cybersecurity	[Evaluation of the EU Agency for Network and Information Security]	12.04.2017
Culture	[Evaluation of the Creative Europe programme]	16.04.2017
Data	[Building a European data economy]	26.04.2017

* For an exhaustive list : http://ec.europa.eu/yourvoice/

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