

5th July 2016 - GSMA Full response to Question 6A

****START****

To the extent that any of these areas have any value they should not be defined by reference to a particular sector and may be appropriate beyond just the electronic communications sector.

Notification of personal data breaches

Given that we will have a general breach reporting duty under GDPR, there is no added value to having a separate rule for breaches that involve electronic communications. In fact, it would become an unnecessary administrative burden, confusing and ultimately counterproductive to have a separate duty.

Confidentiality of electronic Communications

Although the GSMA considers that there is added value to having clear rules about confidentiality of electronic communications between natural and/or legal persons, it makes no sense from the consumer point of view to keep it specifically applicable only to electronic communication services. GSMA believes it is worth making this principle applicable to all providers of services that allow interpersonal communication, independently from the underlying technology as well as explicit in legislation. Only as this gives clarity and reassurance to consumers which will assist with the uptake of digital services and the success of the DSM. Accordingly, this required obligation must not stay within the ePrivacy Directive, limited to electronic communication services but should to be included in legislation that covers all services which allow interpersonal communication. It should also provide very clearly drafted exceptions when confidentiality may not be absolute, for example, when organisations wish to record and monitor calls for training or product improvement purposes, as evidence of the conclusion of contracts or in order maintain security or call quality.

Specific rules on traffic and location data

Risks to consumers from use of traffic and location data can be adequately dealt with under the GDPR and do not need to be addressed in a separate and sector specific piece of legislation. If specific rules are deemed necessary, they should provide that the legal grounds for processing personal data given by GDPR (art. 6) including protecting communications from the threat of malware and viruses also apply to traffic and location data.

Unsolicited marketing communications sent and received through the Internet

An overall consumer protection standard has to be established to ensure that consumers are protected regardless of their location. Unsolicited marketing communication is not an electronic communications sector specific occurrence. Consequently, such provision should be regulated under a more horizontal framework applying to - at minimum - digital services in general. General consumer protection, such as included in the current review of the Unfair Commercial Practices Directive, as well as in the GDPR (Recital 47, 70, Art. 21.2, 21.3), already sufficiently include applicable rules on marketing.

Itemised billing of invoices, Presentation and restriction of calling and connected line, Automatic call forwarding and Directories of subscribers

GSMA believes these are of limited or no real added value in today's world. Further, due to the telecommunication sector's nature of being highly competitive, related consumer provisions will be dealt with by the market itself, if user demand calls for it. Generally, in cases where a competitive market can solve the required objectives through self-regulation, any unnecessary legislation leads to legislative burden and disproportionate costs. Only in case that the consumer related provisions of the ePD are still considered necessary, they should be transferred to the new framework covering a broader range of communication services.

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