

EU digital leadership: telcos and cable companies call for a consistent approach to e-Privacy

The European telecommunications sector puts the confidentiality of communications at the centre of its customer value proposition. A robust legal framework on privacy and data protection, underpinned by the General Data Protection Regulation (GDPR), is just one of the drivers of industry's continuous effort to improve trust in its services. What is more, a solid commitment to privacy and confidentiality is essential to ensure that EU consumers have access to more European choices for their digital services, developed along European values.

ETNO, the GSMA and Cable Europe, as the voice of Europe's leading telecom and cable operators, have been heavily invested in the debate surrounding the draft e-Privacy Regulation, since its publication nearly three years ago. We have contributed constructively to its development process, with the aim of allowing European telcos to use metadata to invest in added-value services improving customer experience and bringing societal benefits, while ensuring that privacy and confidentiality are always protected.

We recognise the significant efforts made by Member States in Council to reflect these two complementary objectives into the proposal. We have commended the incremental improvement of the rules governing the processing of metadata, which has led to additional legal grounds and the possibility to further process metadata if purposes are compatible and specific safeguards are met.

However, we regret that several outstanding issues remain unresolved. Among these: the articulation between the proposed e-Privacy Regulation and the GDPR; the lack of a level playing field for all digital players and of a coherent protection framework for citizens; and the need for future-proof rules that make Europe fit for the digital age in line with the incoming Commission's strategic objective.

More specifically, the asymmetric regulatory approach to the use of GPS location data subject to GDPR versus mobile location data subject to e-Privacy rules has not been resolved, adversely affecting the telecoms sector's ability to innovate and compete with providers of apps and mobile operating systems.

Furthermore, artificially carving out certain service providers from the scope of the draft regulation even if they process the same communications data as telecoms operators (e.g. for the purpose of ensuring network security), and defining the scope according to whether the processing happens "upon" or "after" receipt, further exacerbates the failure to level the playing field across the digital ecosystem. This also fails to afford consistent protection to citizens, by implying that the content of communications may not always be treated as confidential.

Finally, an enumeration of narrow purposes for processing communications data based on specific use cases, rather than general principles, in Article 6 is not conducive to future-proof regulation.

While we recognise the Finnish Presidency's efforts to advance the file for Coreper's review as soon as this week, we do not believe that the Council text as it stands is ripe for becoming a General Approach. Considering that fundamental questions and disagreements around the impact of the proposal on various parts of the digital economy persist, and that the regulatory imbalance between European operators and global digital players is not fully addressed, approving a Council position under these circumstances would lead to a fragile, unclear basis for further negotiations.

ETNO, the GSMA and Cable Europe continue to stand ready to inform decision-makers with our views towards a regulatory framework that protects citizens' privacy and promotes the growth of European companies as data economy players.