Basic information

2000/0189(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Electronic communications: processing of personal data, protection of privacy Repealing Directive 97/66/EC 1990/0288(COD) Amended by 2005/0182(COD) Amended by 2007/0248(COD) See also 2012/0011(COD) See also 2020/0259(COD) **Subject** 1.20.09 Protection of privacy and data protection 3.30.05 Electronic and mobile communications, personal communications	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	CAPPATO Marco (TDI)	29/08/2000

Former committee responsible	Former rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	CAPPATO Marco (TDI)	29/08/2000
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	CAPPATO Marco (TDI)	29/08/2000

Former committee for opinion	Former rapporteur for opinion	Appointed
BUDG Budgets	The committee decided not to give an opinion.	
JURI Legal Affairs and Internal Market	THORS Astrid (ELDR)	13/09/2000
ITRE Industry, External Trade, Research, Energy	SCHRÖDER Ilka (V/ALE)	22/06/2000
ENVI Environment, Public Health, Consumer Policy	BAKOPOULOS Emmanouil (GUE/NGL)	19/09/2000

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2406	2002-01-28
Transport, Telecommunications and Energy	2395	2001-12-06
Transport, Telecommunications and Energy	2374	2001-10-15
Transport, Telecommunications and Energy	2364	2001-06-27
Environment	2439	2002-06-25
Telecommunications	2325	2000-12-22
Telecommunications	2293	2000-10-03

European Commission

Commission DG	Commissioner
Communications Networks, Content and Technology	

Key events

Date	Event	Reference	Summary
12/07/2000	Legislative proposal published	COM(2000)0385	Summary
08/09/2000	Committee referral announced in Parliament, 1st reading		
03/10/2000	Debate in Council		
22/12/2000	Debate in Council		
27/06/2001	Debate in Council		
11/07/2001	Vote in committee, 1st reading		Summary
11/07/2001	Committee report tabled for plenary, 1st reading	A5-0270/2001	
05/09/2001	Debate in Parliament		
06/09/2001	Decision by Parliament, 1st reading	T5-0441/2001	Summary
06/09/2001	Report referred back to committee		
15/10/2001	Debate in Council		Summary
22/10/2001	Vote in committee, 1st reading		Summary
22/10/2001	Committee report tabled for plenary, 1st reading	A5-0374/2001	
12/11/2001	Debate in Parliament		
13/11/2001	Decision by Parliament, 1st reading	T5-0588/2001	Summary
06/12/2001	Debate in Council		
28/01/2002	Council position published	15396/2/2001	Summary
06/02/2002	Committee referral announced in Parliament, 2nd reading		
18/04/2002	Vote in committee, 2nd reading		Summary
18/04/2002	Committee recommendation tabled for plenary, 2nd reading	A5-0130/2002	

29/05/2002	Debate in Parliament		
30/05/2002	Decision by Parliament, 2nd reading	T5-0261/2002	Summary
25/06/2002	Act approved by Council, 2nd reading		
12/07/2002	Final act signed		
12/07/2002	End of procedure in Parliament		
31/07/2002	Final act published in Official Journal		

Technical information

Procedure reference	2000/0189(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealing Directive 97/66/EC 1990/0288(COD) Amended by 2005/0182(COD) Amended by 2007/0248(COD) See also 2012/0011(COD) See also 2020/0259(COD)
Legal basis	EC Treaty (after Amsterdam) EC 095 Rules of Procedure EP 050
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/15449

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0270/2001	11/07/2001	
Text adopted by Parliament, partial vote at 1st reading /single reading		T5-0441/2001 OJ C 072 21.03.2002, p. 0234-0286 E	06/09/2001	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0374/2001	22/10/2001	
Text adopted by Parliament, 1st reading/single reading		T5-0588/2001 OJ C 140 13.06.2002, p. 0025-0132 E	13/11/2001	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0130/2002	18/04/2002	
Text adopted by Parliament, 2nd reading		T5-0261/2002 OJ C 187 07.08.2003, p. 0021-0103 E	30/05/2002	Summary

Council of the EU

Document type	Reference	Date	Summary

Council position	15396/2/2001 OJ C 113 14.05.2002, p. 0039 E	28/01/2002	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2000)0385 OJ C 365 19.12.2000, p. 0223 E	12/07/2000	Summary
Commission communication on Council's position	SEC(2002)0124	30/01/2002	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2002)0338	17/06/2002	Summary
Follow-up document	COM(2006)0334	29/06/2006	Summary
Document attached to the procedure	SEC(2006)0817	29/06/2006	
Follow-up document	C(2009)3200	12/05/2009	
Follow-up document	SEC(2009)0585	12/05/2009	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0048/2001 OJ C 123 25.04.2001, p. 0053	25/01/2001	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2002/0058
OJ L 201 31.07.2002, p. 0037-0047 Summary

Electronic communications: processing of personal data, protection of privacy

2000/0189(COD) - 17/06/2002 - Commission opinion on Parliament's position at 2nd reading

The European Parliament adopted 18 amendments to the council's common position. The amendments were based on a compromise package of amendments that was put as an ensemble to the Parliament by the Council Presidency. The Commission can accept all the amendments in full. (Please refer to the documents of 18/04/02 and 30/05/02.)

Electronic communications: processing of personal data, protection of privacy

2000/0189(COD) - 28/01/2002 - Council position

The Council welcomed the proposal, fully endorsing its objectives and approving most of the provisions. The Council's amendments to the text of the Commission proposal were motivated by the following major concerns: - the need to upgrade the level of protection for subscribers and users; - consideration of the technical requirements involved in providing new communications services; - a wording better reflecting the balance between protection of privacy requirements and the needs of Member State authorities responsible for ensuring security in a democratic society; - the need to clarify the scope of the Directive's provisions in accordance with the guidelines on the editorial quality of Community legislation. In many instances identical or similar changes are adopted in the European Parliament's amendments. On two important questions, directories of subscribers and unsolicited communications, the Council followed the Commission's opt-in approach but introduced technical and other adjustments to the latter's proposal. It was therefore unable to endorse certain European Parliament amendments which marked a departure from the Commission proposal. The Council agreed in particular to make it possible for directories of voice telephony subscribers to derogate from the obligation to obtain the consent of the persons concerned to the continuing inclusion of their information in these directories. The Council also thought it useful to clarify certain areas of the text of the Commission proposal in the light of the serious threat posed by the events of 11 September 2001. Article 15(1) was extended to include the retention of data for a limited period in accordance with the general principles of Community law among the legislative measures which Member States may adopt to safeguard certain major public security interests. Recital 11 was adapted, accordingly, in a balanced way. Finally, a reference to Article 15(1) was added to Article 6(1) as a reminder that limitations on the principle of the erasure of traffic data are possible not only for network or service providers but also for Member States' authorities responsible for defending the aforementioned public interests. In this context, the Council was unable to agree to certain European Parliament amendments.

Electronic communications: processing of personal data, protection of privacy

2000/0189(COD) - 15/10/2001

The Council has put in charge the Committee of Permanent Representatives to: - take up actively work on the only remaining open question concerning unsolicited communications (article 13 of the proposal), - to re-examine, in view of the apparent needs following the 11 September attacks, the question of the deletion of traffic data (article 15) in order to verify in which measure these provisions shall ensure a sufficient legal security. As for the eventual revision of a compromise on this article 15, the need to keep the balance between the protection of civil liberties and the demands on security from the State has been underlined.

Electronic communications: processing of personal data, protection of privacy

2000/0189(COD) - 06/09/2001 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament voted by 204 to 129 with 155 abstentions to refer the draft directive on privacy protection in electronic communication back to its Committee on Citizen's Freedoms and Rights, Justice and Home Affairs for further debate on a compromise. Therefore, the report drafted by Mr Marco CAPPATO (TGI, I) was rejected. At issue was the question of spamming - the sending of unsolicited junk mail. The House adopted by 259 votes in favour, 210 against and 6 abstentions an amendment that would prohibit it without prior permission of subscribers - the so-called 'opt-in system'. However, the end result of all the different amendments adopted individually was unacceptable to a majority of MEPs.

Electronic communications: processing of personal data, protection of privacy

2000/0189(COD) - 12/07/2002 - Final act

PURPOSE : to harmonise the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community. COMMUNITY MEASURE : Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications). CONTENT : by a qualified majority, with the Luxembourg delegation voting against, the Council adopted the Directive concerning the processing of personal data and the protection of privacy in the electronic communications sector incorporating all the amendments approved by the European Parliament at second reading. This text is the last element for reforming telecommunications regulations, as the other elements (four Directives and one Decision) have been adopted and were published in the

Official Journal on 24 April 2002. Dovetailing with this regulatory framework for electronic communications infrastructure and associated services, the Directive aims to create rules which are technologically neutral, while maintaining a high level of data protection and privacy for citizens. In adopting this directive, the Council came to a solution on the question of spamming, the directive states that an opt-in system for e-mail, faxes and automated calling systems is created. This means that users should give prior permission for receiving unsolicited electronic communications for marketing purposes has been specified. Member States may adopt legislative measures to restrict the scope of the rights and obligations when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as referred to in Article 13(1) of Directive 95/46/EC. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds specified in this Directive. As regards "cookies", users should have the right to refuse them, specifying that users should be provided with clear and comprehensive information on their purposes. Before 31 October 2003 Member States shall bring into force the provisions necessary to comply with this Directive. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive and of any subsequent amendments to those provisions. ENTRY INTO FORCE : 31/07/2002. IMPLEMENTATION : 31/10/2003.

Electronic communications: processing of personal data, protection of privacy

2000/0189(COD) - 13/11/2001 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report by Marco CAPPATO (Ind, I) on the protection of privacy in the context of electronic communications. (Please refer to previous text.) Notwithstanding the prohibition on direct marketing by fax, SMS or automated calling systems, companies may use details obtained directly from their customers for direct marketing. Customers must have the right to stop this, free of charge and in an easy manner at any time. The sending of electronic messages for the purposes of direct marketing which disguise or conceal the identity of the sender is prohibited. After 30 months from the entry into force of the directive, subscribers must have the right to ask providers of electronic communications services to use technical solutions which allow them to view the sender and subject line of electronic mails, without having to download the rest of the contents or any attachments. National legislation complying with the directive must be effective 15 months after its entry into force. The Commission must submit an impact report no later than three years after the date of implementation.

Electronic communications: processing of personal data, protection of privacy

2000/0189(COD) - 30/01/2002 - Commission communication on Council's position

The common position, including numerous EP amendments has introduced important clarifications and improvements to the original Commission text. The Commission can therefore support the new text and recommend it to the European Parliament. For the second reading it is important to note that the present draft Directive is part of a wider electronic communications regulatory package consisting of four other Directives and a Decision. Since full agreement has been reached between the institutions on the rest of the package on 13 December 2001, it is very important to try and achieve rapid agreement on this draft Directive too, in order minimise the delay and hopefully still allow a streamlined date of application for all 6 new legal instruments.

Electronic communications: processing of personal data, protection of privacy

2000/0189(COD) - 12/07/2000 - Legislative proposal

PURPOSE : to ensure that a high level of personal data and privacy will continue to be guaranteed for all electronic communications services regardless of the technology used. CONTENT : the proposed Directive is intended to replace Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector, which was adopted by the European Parliament and the Council on 15 December 1997 and had to be transposed by 24 October 1998 at the latest. The proposal is not intended to create major changes to the substance of the existing Directive, but merely adapts and updates the existing provisions to new and foreseeable developments in electronic communications services and technologies. The majority of provisions of the existing Directive are therefore carried over in the new proposal, subject to minor drafting changes. One of the regulatory principles as set out in the context of the 1999 Review of the regulatory framework for electronic communications services, is the aim to create rules which are technology neutral, this is not to impose, nor to discriminate in favour of, the use of a particular type of technology, but to ensure that the same service is regulated in an equivalent manner, irrespective of the means by which it is delivered. This also implies that consumers and users should get the same level of protection regardless of the technology by which a particular service is delivered. In the present proposal the existing definitions of telecommunications services and networks in Directive 97/66/EC will be replaced by definitions of electronic communications services and networks to align the terminology with the proposed Directive establishing a common framework for electronic communications services and networks. Moreover, four new definitions are added of calls, communications, traffic data and location data to strengthen the common understanding of these terms and thereby improve the harmonised implementation of the relevant articles throughout the Community.

Electronic communications: processing of personal data, protection of privacy

2000/0189(COD) - 30/05/2002 - Text adopted by Parliament, 2nd reading

The European Parliament largely approved the compromise on the Directive on data protection that was worked out between the EPP-ED and the PES. There will be no conciliation procedure. It rejected the report by Marco CAPPATO (NI, Italy). On the contentious issue of data protection, it was agreed by Parliament that Member States may only lift the protection of data privacy in order to conduct criminal investigations or safeguard national or public security, when this is a necessary, appropriate and proportionate measure within a democratic society. In a recital, Parliament added that lawful interceptions of electronic communications should be subject to adequate safeguards in accordance with the European Convention on Human Rights and Fundamental Freedoms and with the rulings of the European Court of Human Rights. On spamming, Parliament accepted the Council's common position, thus approving an opt-in system for e-mail, faxes and automated calling systems, which means that users should give prior permission for receiving unsolicited electronic communications for marketing purposes. As regards "cookies", Parliament accepted the Council's common position that users should have the right to refuse them, specifying that users should be provided with clear and comprehensive information on their purposes. On the inclusion of personal data into public directories, Parliament again accepted the Council's common position, saying that users should give prior permission. Parliament has maintained the possibility for Member States to allow reverse search functions. Finally, the European Parliament asked for a review of the Directive within three years of its application.

Electronic communications: processing of personal data, protection of privacy

2000/0189(COD) - 29/06/2006

This Communication reports on the functioning of the five directives of the regulatory framework for electronic communications networks and services, as required by these directives. (Please see Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC.) The Communication also launches a public consultation on the future of the electronic communications regulatory framework on which comments are requested by 27 October 2006. It explains how the framework has delivered on its objectives, and identifies areas for change.

Assessment of the framework: consumers and industry groups supported the framework's approach, albeit with criticisms concerning its implementation. New entrants, cable operators, ISPs and software and equipment producers noted that the framework had allowed the development of competition and innovation across Europe, facilitating investment and broadband penetration. However, the majority of incumbents considered that ex-ante regulation hindered new investment and should be phased out by 2015. In addition, there is room for significant improvement in the way that spectrum is managed. Specifically, the Commission considers that more effective management of spectrum would release its full potential to contribute to offering diverse and affordable services to the European citizen and to strengthen the competitiveness of European ICT industries. In other respects, the Commission considers that the principles and flexible tools in the regulatory framework offer the most appropriate means of encouraging investment, innovation and market development. There is nevertheless room for the Commission and NRAs to provide guidance on how the rules should be applied, so as to increase predictability for stakeholders.

Changes proposed overall:

The current regulatory framework has produced considerable benefits, but it needs attention in a number of areas in order to remain effective for the coming decade. The two main areas for change are:

- application to electronic communications of the Commission's policy approach on spectrum management, as set out in the Communication of September 2005;

- reduction of the procedural burden associated with the reviews of markets susceptible to *ex-ante* regulation.

In addition to these two, the Communication identifies other changes that seek to:

- consolidate the single market,

- strengthen consumers and user interests,

-improve security and

- remove outdated provisions.

Improved approach to managing spectrum for electronic communications: a new system for spectrum management is needed that permits different models of spectrum licensing (the traditional administrative, unlicensed and new marked-based approaches) to coexist so as to promote economic and technical efficiency in the use of this valuable resource. Based on common EU rules, greater flexibility in spectrum management could be introduced by strengthening the use of general authorisations whenever possible. When not possible, owners of spectrum usage rights should not be unduly constrained but subject to certain safeguards, have the freedom to provide any type of electronic communications service ('service neutrality') using any technology or standard under common conditions ('technological neutrality'). Using criteria based on economic efficiency, selected bands agreed at EU level via a committee procedure would become available for use under general authorisations, or subject to secondary trading across the EU.

Common authorisation conditions for the use of the radio spectrum would also be enacted with this procedure in appropriate cases. The administrative model will remain important especially where, on balance, legal certainty and interference management issues are priorities and where public interest objectives are at stake.

Streamlining market reviews: the Commission has reported on its experience with the 'Article 7' procedure and concluded that the procedure represents an important step towards the creation of an internal market for electronic communications. As a follow-up, this Communication proposes to reduce the administrative burden of the market review procedure by simplifying the notification requirements for certain draft national measures, given that by the time such changes are fully implemented, the NRAs will have considerably more experience with the process. Regulators would still need to conduct market reviews and undertake national and European consultations, but for certain market analyses and notifications the current level of detail would no longer be required. In a number of predefined categories of cases, a simplified notification procedure would be introduced. This would allow the Commission and the NRAs to focus on cases where substantial problems may arise. In the short term, it is proposed to issue a revised version of the procedural Recommendation in order to initiate the simplified notification procedures from 2007, and in the longer term, to modify the framework to allow all procedural elements to be gathered together into a single Regulation.

Consolidating the Internal Market: the Commission discusses proposals for the following:

- extending Commission veto powers to cover proposed remedies under the Article 7 procedure;

- tackling the problem of routine suspension of regulatory decisions by some national courts during the appeal period by laying down EU level criteria for granting suspension of regulatory decisions;

- for services with a pan-European or an internal market dimension, a Community procedure is proposed, in order to reach EU-level agreement on common usage conditions as well as on common approaches to authorisation, to allow for co-ordinated deployment of services;

- other changes designed to strengthen the internal market aim to: ensure that users can access information society services provided in other Member States (e.g. freephone numbers); strengthen the ability of NRAs to sanction a breach of regulatory obligations; extend the scope of the technical implementing measures that the Commission can take, e.g. in areas like numbering; introduce a mechanism for Commission approval of measures taken by NRAs under Article 5(1) of the Access and Interconnection Directive; require 'must carry' obligations to be reviewed by a specific deadline; and establish a procedure to facilitate agreement at EU level on common requirements on networks and services.

Strengthening consumers' and users' rights: the Commission intends to publish a Green Paper on universal service in 2007, to launch a wide ranging debate.

Improving Security: in order to reinforce the confidence of users in electronic communications, a series of measures is proposed: 1) to impose specific requirements on providers of electronic communications to notify certain breaches of security and to keep users informed; 2) to authorise competent national authorities to require specific security measures that implement Commission recommendations or decisions; and 3) to modernise the provisions on network integrity.

Better regulation: it is proposed to withdraw a number of redundant or outdated provisions.