

POLICY BRIEFING

TRANSATLANTIC WEEK 2018

WEDNESDAY, 7 - FRIDAY, 9 MARCH

amchameu.eu/transatlanticweek

Briefing session:



Content

- ✓ What is the e-Privacy Regulation?
- ✓ Why does it matter to your members?
- ✓ What is the business impact ?
- ✓ What role for national AmChams?

1. What is the ePrivacy Regulation ?

Objectives of the proposal

- Adapting the existing **e-Privacy Directive** (Directive 2006/24/EC) to the **online world**
- Ensuring **confidentiality** of electronic communication services
- ***Lex specialis* to GDPR**: covering personal and non-personal communication data (content & metadata)
- Reviewing rules for **cookies**

Timeline

- January 2017: Publication of [European Commission proposal](#)
- October 2017: [European Parliament position](#)
- Most Member States still defining their position



Key moment to lobby at national level

2. Why does it matter to your members?

Communication data in the digital ecosystem

Data produced by...

- Offline & online communication services
- Connected objects
- Connected machines

Who is using it ?

- Telecom service providers
- Internet service providers
- Software companies
- Technology equipment providers
- Retail companies
- Manufacturing companies
- Advertising & marketing industry

A broad scope

- **Personal and non personal data**
- **Traditional and online communication services**
- **Minor ancillary service to electronic communication services**
- **Machine-to-Machine communication services**

UNDER
E-PRIVACY

Much stricter rules than today...

- Processing and storage of communication data **prohibited** except if **consent is given by all end-users**
- The use of processing and storage capacity of a device is **prohibited** unless **consent is given by all end-users**

...Conflicting with today's market realities

- Ever more interconnected communication services
- People expect customised services
- People expect free access to online services

AmCham EU position

- Narrow the Scope
- Alignment with the GDPR
- Clear rules for service providers
- User-friendly rules for communication services and data storage on devices



3. What is the business impact?

Scope – Minor ancillary services (Art. 4 para.2)

AmCham EU: ‘Minor ancillary services should be excluded from the scope of the regulation.’

Business Example:

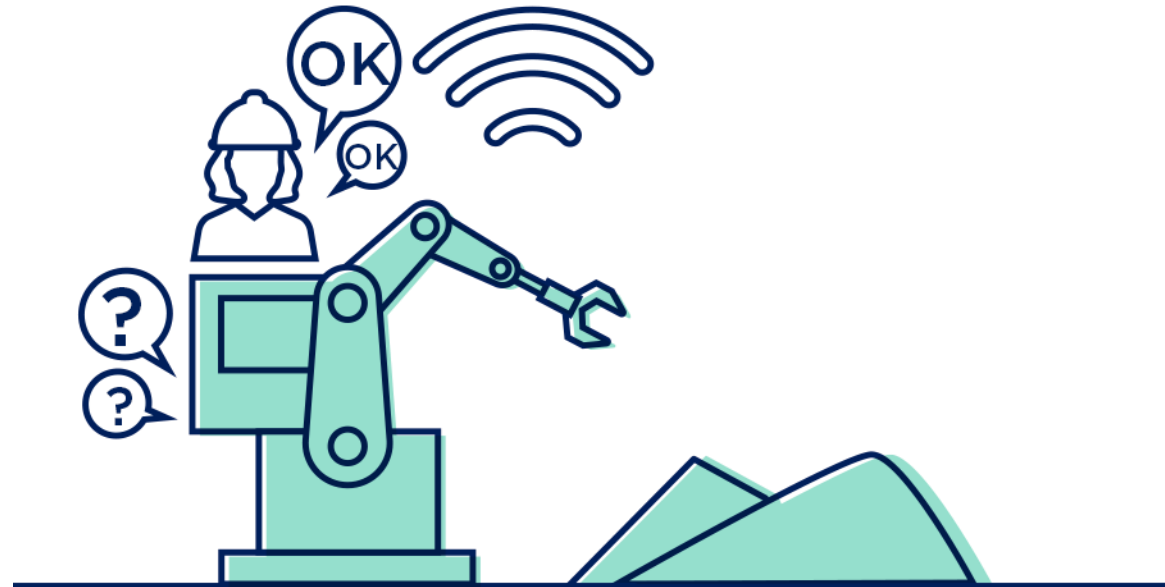
- ❖ Facilitating communication is the future of digital services
- ❖ Webmail embedded as a minor services on a web page

Scope – Machine-to-machine communication (Recital 12)

AmCham EU: ‘If M2M services are in the scope, only the transmission of the service should be covered. The regulation needs to clarify that the transmission ends with the service provider, not the end-user. The regulation should also recognize that not all M2M services require the same level of protection.’

Business Example:

- ❖ Connected machines
- ❖ Who is the end-user ?



Rules for confidentiality (Articles 5-6)

AmCham EU: 'Processing of electronic communications data is fundamental to the functioning of electronic communication services. It should therefore not be subject to all-party-consent. The regulation needs to recognise all GDPR legal bases for processing communication data in order to reflect market realities.'

Business Example:

- ❖ Displaying a message, folders, mailbox search
- ❖ Spam, fraud detection, abusive content
- ❖ Digital assistants
- ❖ Voice replacing screens



Rules for storage and erasure (Article 7)

AmCham EU: ‘Storage of communication data should be allowed and subject to the same rules as GDPR.’

Business Example:

- ❖ Saving emails
- ❖ Storing pictures in the cloud

Rules for terminal equipment devices (Article 8)

AmCham EU: ‘The rules for processing terminal equipment data should be aligned with the GDPR and subject to the same legal bases. Online advertising is already regulated by the GDPR, there is no need for further rules.’

Business Example:

- ❖ Cookies & targeted advertisement
- ❖ Fraud, security, abusive content
- ❖ Location data
- ❖ Digital devices in job environment

Rules for giving consent (Article 9)

AmCham EU: ‘The consent standard needs to be the same as in the GDPR’.

Business Example:

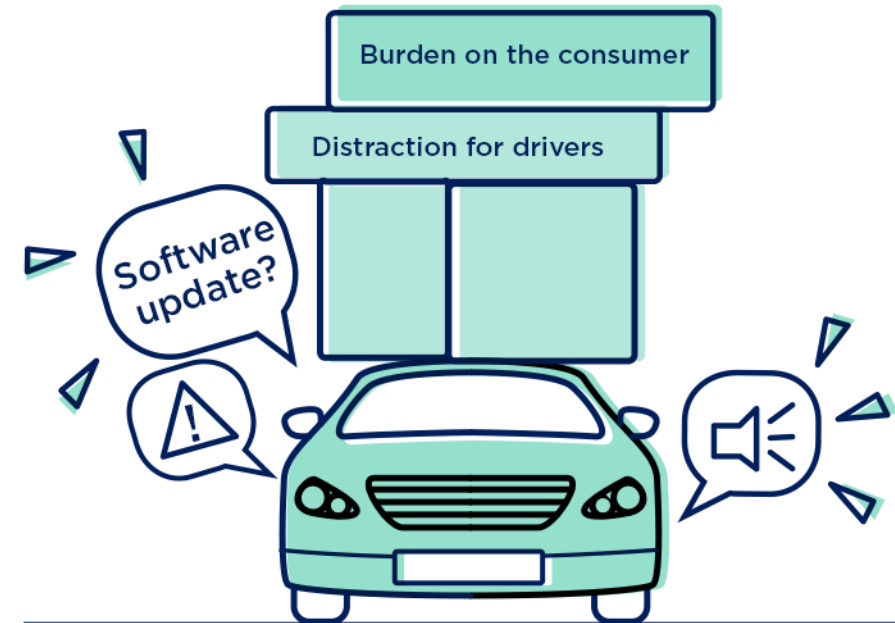
- ❖ GDPR require a high standard for consent
- ❖ GDPR allows to express consent through settings
- ❖ Consent as condition to access a service

Software privacy settings (Article 10)

AmCham EU: 'Article 10 should be deleted or limited to providing users with appropriate privacy settings.'

Business Example:

❖ Any software that connect users to the internet (eg connected cars)



Law enforcement access requirements (Article 11)

AmCham EU: ‘The regulation should provide a high level of protection and procedure as well as rule of law safeguards for law enforcement access to data.’

Business Example:

- ❖ Increase exposure of users’ data to law enforcement access
- ❖ No harmonized set of procedural safeguards
- ❖ No common jurisdictional rules, while opening doors for cross-border access

4. What role for national AmChams?

Role for the AmChams

AmCham EU

- Advocacy documents
- Engagement with EU institutions in Brussels

National AmChams

- Raise the topic as key digital economy file at national level
- Proactively liaise with relevant Ministries, e.g. ask for clarifications, impact assessment

Thanks!

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