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**WORKING PAPER**

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**MEETING DOCUMENT**

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From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	ePrivacy : Presentation by the Commission (TELECOM WP 30/1/20)

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Delegations will find in annex the presentation on ePrivacy.



# ePrivacy Directive

Transposition and compliance with GDPR

## The Issue

**Commission's task as guardian of the Treaties is to ensure the compatibility of national law with Union law**

### ***Lex generalis: General Data Protection Regulation***

- Replaced Data Protection Directive 95/46/EC

### ***Lex specialis: ePrivacy Directive***

- Sector specific application (electronic communications sector): complements and particularises GDPR

- ***National laws transposing the ePrivacy Directive have to comply with the changes introduced by the GDPR***

## Action

- ***Technical letters to collect information***
  - Sent on 26 April 2019
  - Deadline 10 weeks
  - Same information request to all Member States
  - Focus on effects of GDPR entry into application on the transposition and application of the ePrivacy Directive
- ***28 replies received***
  - Diverging level of detail and completeness
  - Diverging response time

**Preliminary analysis on the basis of the replies with further verification of national laws**

## Questions

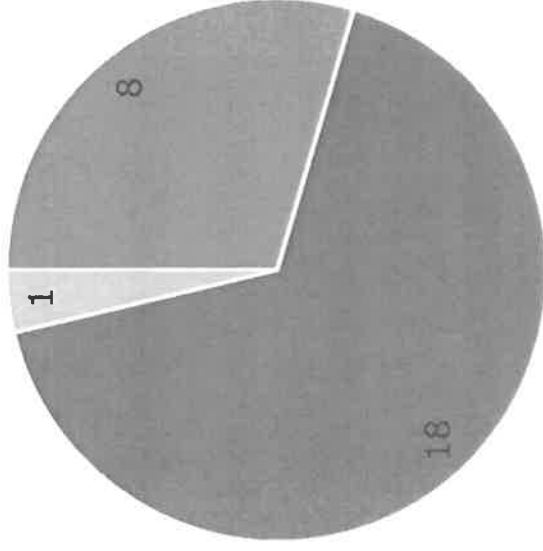
1. *Compliance of national laws with consent requirements, notably in Articles 5, 6, 9, 12 and 13 of the ePrivacy Directive, in particular with respect to the definition of consent in the GDPR*
2. *Rules on security (Article 4 of the ePrivacy Directive)*
3. *Transposition of Article 5(3) of the ePrivacy Directive*
4. *Processing grounds for traffic and location data (Articles 6 and 9 of the ePrivacy Directive)*
5. *Competent authorities and enforcement (Article 15a of the ePrivacy Directive)*



## Articles 5, 6, 9, 12 and 13: Consent

### Preliminary conclusions

**At least 18 MS require further clarification\***



- Appears ok
- Further clarification needed
- Not assessed yet

- No update of national laws
- No legal reference to GDPR definition or national implementing laws
- Three MS acknowledge that their laws need to be updated

*\*On the basis of 27 MS*



## Article 5(3)

### Protection of terminal equipment

#### Preliminary Conclusions

**At least 2 MS require further clarification with regards to Article 5(3)\***

- 2MS seem to apply an opt-out model for consent in Article 5(3)
- 1 MS seems to apply Article 5(3) only to personal data

*\*On the basis of 27 MS*

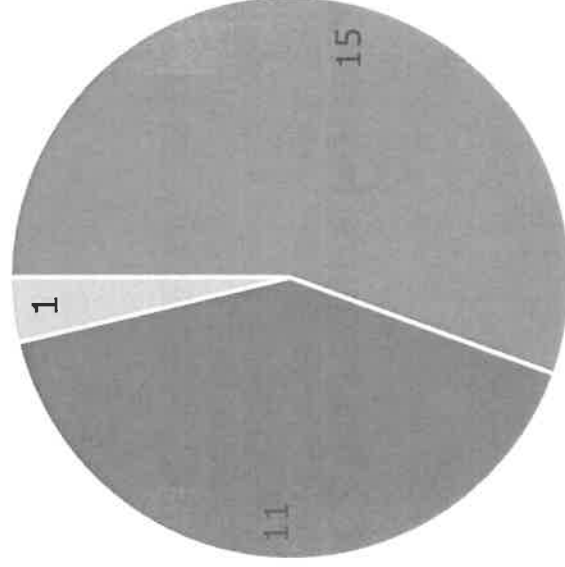
## Articles 6 and 9 Processing of traffic and location data

### Preliminary conclusions

**At least 11 MS require further clarification\***

Additional grounds for processing traffic and location data which are not provided for in the ePrivacy Directive:

- Compliance with legal obligation outside Article 15
- Creation of “usage profile”
- Other additional grounds



- Appears ok
- Further clarification needed
- Not assessed yet

\* On the basis of 27 MS

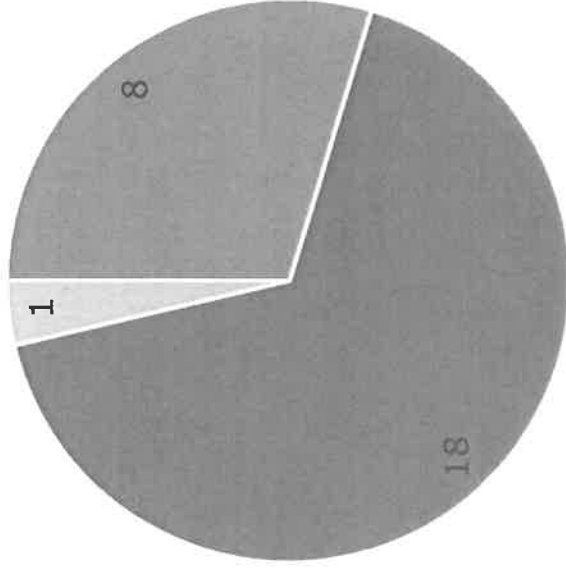


## Article 15a

### Sanctions and Independence of authorities

#### Preliminary conclusions

At least 18 MS require further clarification\*



- Financial sanctions not dissuasive
- No information regarding ranges of financial sanctions
- Insufficient information on the independence of the authorities in charge of controlling compliance as far as personal data is concerned

- Appears ok
- Further assessment needed
- Not assessed yet

\* *On the basis of 27 MS*



## Overview and follow-up

### Preliminary Conclusions

#### Further clarification required:

- At least 18 MS on the issue of consent in light of the GDPR
- At least 11 MS on additional grounds for processing traffic and location data
- At least 18 MS on the issues of sanctions and independence of authorities
- At least 2 MS on the transposition of Article 5(3)

#### Overall:

- At least 23 MS require further clarification
- 3 MS seem to have properly adapted the provisions
- 1 MS has not been assessed yet