



EUROPEAN COMMISSION

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C(2017) 5478 final*

*Mr Milan ŠTĚCH
President of the Senát
Valdštejnské náměstí 17/4
CZ – 118 01 PRAGUE 1*

Dear President,

The Commission would like to thank the Senát for its Opinion on the proposal of the Commission for a Regulation concerning the respect for private life and the protection of personal data in electronic communications {COM(2017) 10 final}.

The Commission is confident that the proposal will enhance the privacy protection of end-users, increase trust in digital services and allow businesses to fully participate in, and profit from, the Digital Single Market.

The Commission is pleased that the Senát agrees with the aim of the proposal to ensure users' privacy in electronic communications and duly notes the observations made by the Senát.

The Commission is of the view that its proposal contains clear provisions on definitions as well as the material scope of the proposal. The provisions of the proposal have different scopes of application. The provisions on the confidentiality of communications apply to electronic communications services, as defined in the proposed European Electronic Communications Code¹. Recital 11 illustrates the services concerned: "that definition encompasses not only internet access services and services consisting wholly or partly in the conveyance of signals but also interpersonal communications services, which may or may not be number-based, such as for example, Voice over IP, messaging services and web-based e-mail services." Internet search services do not fall within the definition of electronic communications services.

*The proposal will contribute to a harmonised legal framework on privacy and data protection in the European Union. To this end, as *lex specialis* to the General Data*

¹ Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) COM/2016/0590 final - 2016/0288 (COD).

Protection Regulation², a swift adoption of the proposal by the co-legislators is indispensable to ensure entry into application at the same time as the General Data Protection Regulation.

On the protection of confidentiality of information stored in terminal equipment, the Commission has proposed rules which would have the same purpose as the existing ones, notably Article 5.3 of the ePrivacy Directive.³ According to the current legislation, entities need to obtain the consent of the user to access or store information in the device. This is because information stored in terminal equipment is part of one's private sphere as protected under the Charter of Fundamental Rights of the European Union. The Eurobarometer on ePrivacy⁴ also shows that 92% of the respondents believe it is important that their personal information on their computer, smartphone or tablet can only be accessed with their permission. The rules on the protection of the confidentiality of information stored in terminal equipment apply in the same manner to all enterprises.

The Opinion of the Sénat has been made available to the Commission's representatives in the ongoing negotiations with the co-legislators and will inform these discussions.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Sénat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Julian King
Member of the Commission*

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

³ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, p.37.

⁴ 2016 Eurobarometer survey (EB) 443 on e-Privacy (SMART 2016/079).