

The background of the top half of the page is a dark blue map of Europe. The map is surrounded by twelve yellow five-pointed stars, arranged in a circle, similar to the European Union flag. Bright blue light rays emanate from the center of the map, creating a sense of focus and energy.

# European Union's Privacy, Data protection and Cybersecurity Compliance Framework

*Insights and recommendations  
from Cyberwatching.eu*



# cyberwatching.eu consortium



## Table of content

1	Introduction.....	3
2	EU Regulatory Framework.....	3
3	ePrivacy Regulatory Update .....	3
4	Related Cyberwatching.eu Publications.....	6

## Disclaimer

The work described in this document has been conducted within the project cyberwatching.eu. This project has received funding from the European Union's Horizon 2020 (H2020) research and innovation programme under Grant Agreement no.740129. This document does not represent the opinion of the European Union, and the European Union is not responsible for any use that might be made of its content.

## 1 Introduction

This report presents the results of the analysis of the risk and recommendations on cybersecurity services from different angles, which include an **update on the European Union's privacy, data protection and cybersecurity compliance framework, thereby resulting in a set of key recommendations covering the cybersecurity services landscape.**

## 2 EU Regulatory Framework

The interplay between the legislations of the European Union (EU), including the General Data Protection Regulation (GDPR), the Directive on Network and Information Security (NIS) and the ePrivacy Directive (upcoming ePrivacy Regulation) have been analysed in depth in previous deliverables of cyberwatching.eu, as indicated below:

- D3.2: European Cybersecurity Research and Privacy and Innovation Ecosystem, specifically, Chapter 2 "EU Cybersecurity Governance Ecosystem".
- D3.4: EU Cybersecurity Legal and Policy Aspects: Preliminary Recommendations and Road Ahead", specifically, Chapter 2 "Interplay Between GDPR and NIS Directive". That deliverable's objective was to support policy, regulatory standards & legal discussions that contribute to shaping global cybersecurity and the privacy landscape.
- D4.4: EU Cybersecurity and Privacy Interim Roadmap, Chapter 2.2 "The Evolving Legislation Landscape".

This deliverable will address updates of importance to the EU Privacy, Data Protection and Cybersecurity Compliance Framework, namely the "ePrivacy Regulation" and relevant updates from stakeholder bodies, namely, the European Cyber Security Organisation (ECSO).

## 3 ePrivacy Regulatory Update

The ePrivacy Regulation remains under negotiations under the new Presidency of the Council, with another draft regulation published on 5<sup>th</sup> January 2021.<sup>1</sup> The Portuguese Presidency, which will remain for the next 6 months, until 30 June 2021<sup>2</sup> has several aims with regards to moving the ePrivacy Regulation forward.

The European Data Protection Board ("EDPB") issued a statement on the ePrivacy Regulation and the future of the Supervisory Authorities and the EDPB, calling for any proposed changes in the draft Regulation to complement the General Data Protection Regulation ("GDPR"), by providing "additional strong guarantees for confidentiality and protection of all types of electronic communication".<sup>3</sup>

Following this approach, the Presidency proposes "*to simplify the text and to further align it with the GDPR*", to ensure consistency and legal certainty for users and businesses – similar to the Commission's Proposal of 10 January 2017.<sup>4</sup> The draft specifies that the amendments "reflect the

---

<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), Brussels, 5 January 2021, available at: <https://data.consilium.europa.eu/doc/document/ST-5008-2021-INIT/en/pdf>

<sup>2</sup> More information available at: <https://www.consilium.europa.eu/en/council-eu/presidency-council-eu/>

<sup>3</sup> Statement on the ePrivacy Regulation and the future role of Supervisory Authorities and the EDPB, Adopted on 19 November 2020, p.1, available at: [https://edpb.europa.eu/sites/edpb/files/files/file1/edpb\\_statement\\_20201119\\_eprivacy\\_regulation\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement_20201119_eprivacy_regulation_en.pdf).

<sup>4</sup> Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic

*lex specialis* relation of the ePrivacy to the GDPR”, which, in practice means that the accountability principle will also apply to the providers of electronic communications services.

The Presidency points out that one of the most important amendments introduced is the possibility to process electronic communications’ metadata.<sup>5</sup> In the same scope, another equally important amendment was made in Article 8(1(g)) of ePrivacy Regulation which aligns the ePrivacy Regulation with the further processing compatibility of the GDPR<sup>6</sup>. Specifically, this amendment allows providers of electronic communication services to use the collection of information from the end-user’s terminal equipment, as well as the processing and storage capabilities of the terminal equipment, for further processing activities. This amendment appears to facilitate the providers of electronic communication services to rely on the purpose of “further use”.

However, additional security measures seem to be expected in order for the electronic communications’ metadata to be further processed, some of which are: the pseudonymisation of the metadata, excluding the use of the said metadata for profiling activities, excluding metadata that includes location data that reveal special categories of personal data. Having the above, **further processing of metadata of electronic communications has a high benchmark** according to the new draft of the ePrivacy Regulation.

In addition, the new draft reinstates the ability for **third parties to share anonymised statistical metadata**. This is in line with the proposal of the EDPB which emphasized that electronic communications’ metadata “can be processed without consent after it has been genuinely anonymised”.<sup>7</sup> Prior to sharing of anonymised metadata, the draft requires additional safety measures, including the carrying out of a Data Protection Impact Assessment (DPIA) and possibly the need for a prior consultation with the Supervisory Authority (as stated in Articles 35 and 36 of the GDPR), thereby informing the end-user of the envisaged processing operations of data, respecting his or her right to object, and implementing technical and organisational measures.<sup>8</sup>

Furthermore, the new draft recognises **the “performance of a contract” as a legal basis** for the processing of metadata and other permitted processing activities (for example, billing, calculating interconnection payments, detecting or stopping fraudulent or abusive use of / subscription to electronic communications’ services).<sup>9</sup> The new draft also retains the possibility for obtaining end-user consent to the specific processing of communications’ metadata. Meanwhile, similar to the previous version of the Regulation, the ability to rely on legitimate interests as a lawful ground to process metadata remains absent. Nonetheless, being able to rely on the ground of the performance of a contract is a valuable addition to the ePrivacy Regulation, as it offers electronic communications providers another legal basis other than consent for this processing activity.

---

Communications), Brussels, 5 January 2021, p.2, available at: <https://data.consilium.europa.eu/doc/document/ST-5008-2021-INIT/en/pdf>.

<sup>5</sup> Article 6c and Recital 17aa of the Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), Brussels, 5 January 2021, p.2, available at: <https://data.consilium.europa.eu/doc/document/ST-5008-2021-INIT/en/pdf>.

<sup>6</sup> Specifically, Articles 5 (1(b)) and Articles 6 (4) of the General Data Protection Regulation.

<sup>7</sup> Statement on the ePrivacy Regulation and the future role of Supervisory Authorities and the EDPB, Adopted on 19 November 2020, p.2, available at: [https://edpb.europa.eu/sites/edpb/files/files/file1/edpb\\_statement\\_20201119\\_eprivacy\\_regulation\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement_20201119_eprivacy_regulation_en.pdf).

<sup>8</sup> Article 6b (2 (a) to (c)) of the Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), Brussels, 5 January 2021, p. 73, available at: <https://data.consilium.europa.eu/doc/document/ST-5008-2021-INIT/en/pdf>.

<sup>9</sup> Article 6b (1 (b)) of the Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), Brussels, 5 January 2021, p. 70, available at: <https://data.consilium.europa.eu/doc/document/ST-5008-2021-INIT/en/pdf>.

Another more minute but nevertheless noteworthy amendment made was the **update of the 'location data' definition**, which was absent from the previous version of the ePrivacy Regulation.

<sup>10</sup> The inclusion of this definition to the ePrivacy Regulation is instrumental, as it will help ensure legal certainty and consistency for electronic communications providers.

It is worth noting a concern underlined by the EDPB which has not been directly tackled in the new draft of the ePrivacy Regulation. Namely, that the **oversight of the compliance with the ePrivacy Regulation** should be the same supervisory authorities which are responsible for the enforcement of the GDPR, as initially proposed by the European Commission.<sup>11</sup> Furthermore, the EDPB suggests that the future ePrivacy Regulation should be "*formulated to improve its procedural situation instead of adding complexity*".<sup>12</sup> This is a topic that is yet to be clarified in the current state of the legislation and could potentially create many inconsistencies and procedural uncertainty among electronic communication providers.

In the last days before the submission of this deliverable, the Council of the EU has agreed on the revised proposal of the Portuguese presidency, which is a positive development towards the final text.<sup>13</sup> However, due to the lack of sufficient time for a proper analysis, and in order to respect the due process of the review of deliverables within the consortium, the proposal of February 10<sup>th</sup> will be further analysed in the final White Paper around legal compliance and policy statements (D3.7).<sup>14</sup>

In conclusion, it is clear that the new Presidency aims to further align the ePrivacy Regulation with the GDPR. The inclusion of the further processing possibility in alignment with the GDPR, the addition of the legal basis of performance of a contract for the processing of metadata, and the ability to share anonymised metadata with third parties (under the implementation of additional security measures) are all advancements towards a more cohesive legal framework for electronic communication providers. However, the topic of the oversight of ePrivacy compliance is yet to be clarified in the current state of the legislation and could potentially create many inconsistencies and procedural uncertainty among electronic communication providers. The consortium will continue to track the progress of the ePrivacy Regulation in the following months and note any updates to Deliverable D3.7 -Regulating Frameworks.

---

<sup>10</sup> Article 4 (3 (j)) of the Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), Brussels, 5 January 2021, p. 65, available at: <https://data.consilium.europa.eu/doc/document/ST-5008-2021-INIT/en/pdf>.

<sup>11</sup> European Commission, Proposal for a regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), Brussels, 10 January 2017, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017PC0010>.

<sup>12</sup> Statement on the ePrivacy Regulation and the future role of Supervisory Authorities and the EDPB, Adopted on 19 November 2020, p.3, available at: [https://edpb.europa.eu/sites/edpb/files/files/file1/edpb\\_statement\\_20201119\\_eprivacy\\_regulation\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement_20201119_eprivacy_regulation_en.pdf).

<sup>13</sup> Press Release of the Council of the EU, Confidentiality of electronic communications: Council agrees its position on ePrivacy rules, 10 February 2021, available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/02/10/confidentiality-of-electronic-communications-council-agrees-its-position-on-eprivacy-rules/>.

<sup>14</sup> Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), Brussels, 10 February 2021: available at: <https://data.consilium.europa.eu/doc/document/ST-6087-2021-INIT/en/pdf>.

## 4 Related Cyberwatching.eu Publications

- Cybersecurity risk management: How to strengthen resilience and adapt in 2021<sup>15</sup>
- Security and Privacy by Design for Healthcare<sup>16</sup>
- Emerging technologies in the age of GDPR – Findings & recommendations from EU & R&I projects<sup>17</sup>
- Building STRONG CYBERSECURITY in the European Union<sup>18</sup>
- EU Cybersecurity legal and policy aspects: preliminary recommendations and road ahead<sup>19</sup>
- European Cybersecurity and Privacy Research and Innovation Ecosystem<sup>20</sup>
- Cybersecurity and Privacy ecosystem model report<sup>21</sup>

---

<sup>15</sup> <https://cyberwatching.eu/publications/cybersecurity-risk-management-how-strengthen-resilience-and-adapt-2021>

<sup>16</sup> <https://cyberwatching.eu/publications/security-and-privacy-design-healthcare>

<sup>17</sup> <https://cyberwatching.eu/publications/emerging-technologies-age-gdpr-%E2%80%93-findings-recommendations-eu-ri-projects>

<sup>18</sup> <https://cyberwatching.eu/publications/building-strong-cybersecurity-european-union>

<sup>19</sup> <https://cyberwatching.eu/publications/eu-cybersecurity-legal-and-policy-aspects-preliminary-recommendations-and-road-ahead>

<sup>20</sup> <https://cyberwatching.eu/publications/european-cybersecurity-and-privacy-research-innovation-ecosystem>

<sup>21</sup> <https://cyberwatching.eu/publications/cybersecurity-and-privacy-ecosystem-model-report>

234567890D48E1563QW



cyberwatching.eu has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 740129.