e-Privacy Regulation Procedure number: 2017/0003/COD Will repeal Directive 2002/58/EC ☐ I'ts strictly related to the GDPR Regulation EU 2016/679 [2] - 10/01/2017 — Draft by the EU Commission **2017** — 24/04/2017 — **EDPS Opinion** 26/10/2017 — Draft by the EU Parliament C - 22/3/2018 — Draft by the Bulgarian Presidency **EDPB - Statement on the revision of** the ePrivacy Regulation and its impact on the protection of **2018** — 25/5/2018 individuals with regard to the privacy and confidentiality of their communications ☐ 19/10/2018 ☐ Draft by the Austrian Presidency C Text proposed by Romanian Council 22/02/2019 presidency EDPB - Statement 3/2019 on an **-** 13/03/2019 C **ePrivacy Regulation** - 20/05/2019 — Progress Report by the Romanian Presidency 2019 - 12/07/2019 — Draft by the Finnish Presidency C - 26/07/2019 — Second Draft by the Finnish Presidency C - 18/09/2019 — Third Draft by the Finnish Presidency C → 04/10/2019 — Fourth Draft by the Finnish Presidency C - 21/02/2020 — Draft by the Croatian Council Presidency 04/11/2020 — Draft by the German Presidency 2020 **EDPB - Statement on the ePrivacy** Chronology **─** 19/11/2020 **── Regulation and the future role of** C **Supervisory Authorities and the EDPB** - 05/01/2021 — Draft by the Portuguese Presidency ď The Member States agreed on a mandate for — negotiations with the European Parliament and trilogue began on 20 May 2021 EDPB - Statement 03/2021 on the 9/03/2021 **ePrivacy Regulation** 1. European Commisison − 20/05/2021 — Trilogue starts — 2. European Parliament 3. Council of the European Union Article 12 Article 13 **CHAPTER III** Article 14 2021 -New version by the Council partially Article 15 accessible to the public (26.11.2021) The Slovenian Presidency of the Council Article 16 of the EU invited Member States to ♂. - 4/11/2021 provide their comments and remarks on Article 21 the proposed 'ePrivacy' Regulation. **CHAPTER V** Further interinstitutional negotiations (Article 23 'trilogue') are scheduled for 18 November **CHAPTER VI** Article 26 New version by the Council partially **-** 8/11/2021 ď accessible to the public (26.11.2021) New version by the Council partially **-** 12/11/2021 ď accessible to the public (30.11.2021) **Current status** 12/11/2021 - Latest Document by the Council of the European Union 43 Wheras Article 1 Subject matter Article 2 Material Scope **CHAPTER I** Article 3 — Articles from 1 to 4 — **GENERAL PROVISIONS** Territorial scope and representative Article 4 Definitions **Article 4a** Consent Article 5 Confidentiality of electronic communications data Article 6 Compatible processing of electronic communications metadata Article 6 Permitted processing of electronic communications data Proposal for a **REGULATION OF THE EUROPEAN Article 6a** PARLIAMENT AND OF THE COUNCIL Permitted processing of electronic concerning the respect for private life communications content and the protection of personal data in electronic communications and repealing **Article 6b** Directive 2002/58/EC (Regulation on Permitted processing of electronic **Privacy and Electronic Communications)** communications metadata **CHAPTER II PROTECTION OF ELECTRONIC Article 6c COMMUNICATIONS OF NATURAL AND** — Articles from 5 to 11 — **Compatible processing of electronic LEGAL PERSONS AND OF INFORMATION** communications metadata STORED IN THEIR TERMINAL EQUIPMENT Article 7 Storage and erasure of electronic communications data Article 8 Protection of information stored in and related to end-users' terminal equipment Article 9 Consent Article 10 Information and options for privacy settings to be provided Article 11 Restrictions Article 12 Presentation and restriction of calling and connected line identification Overview(*) ─ 29 Articles -**Article 13** xceptions to presentation and restriction of calling and connected line identification in relation to emergency communications **CHAPTER III** Article 14 **NATURAL AND LEGAL PERSONS' RIGHTS** - Articles from 12 to 17 — Blocking Unwanted, malicious or nuisance TO CONTROL ELECTRONIC calls **COMMUNICATIONS** Article 15 Publicly available directories Article 16 Unsolicited and direct marketing communications Article 17 Information about detected security risks Article 18 Independent supervisory authorities **CHAPTER IV** Article 19 INDEPENDENT SUPERVISORY - Articles from 18 to 20 European Data Protection Board **AUTHORITIES AND ENFORCEMENT** Article 20 Cross-border cooperation Article 21 Remedies Article 22 Right to compensation and liability CHAPTER V - Articles from 21 to 24 **REMEDIES, LIABILITY AND PENALTIES** Article 23 General conditions for imposing administrative fines Article 24 **Penalties** Article 25 Exercise of the delegation **CHAPTER VI** DELEGATED ACTS AND IMPLEMENTING - Articles from 25 to 26 Article 26 Committee Article 27 Repeal Article 28 Monitoring and evaluation clause **CHAPTER VII** - Articles from 27 to 29 **FINAL PROVISIONS** Article 29 Entry into force and application 1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. 2. This Regulation shall apply from 24 months from the date of entry into force of this Regulation. Regulation (EU) 2016/679 - GDPR C Directive (EU) 2018/1972 of 11 December 2018 establishing the European Electronic Communications Code Commission Directive 2008/63/EC of 20 The proposal on ePrivacy in June 2008 on competition in the markets in **Article 4 expressly recalls the** telecommunications terminal equipment definitions laid down by the: DIRECTIVE (EU) 2015/1535 OF THE **EUROPEAN PARLIAMENT AND OF THE** COUNCIL of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services It's lex specialis to the GDPR **GDPR** Charter TFEU It completes the data protection regulation ecosystem - ECHR - Convention 108+ Soft Law Article 16 Article 114 Legal basis - ECHR **GDPR** It has been considered part of the Digital Single Market Strategy (DSM Strategy) It applies both to natural and legal persons **Key-points Enhancing security and confidentiality of** communications (including content and metadata, e.g. sender, time, location of a communication) **Definition of "electronic communications data"** — 'electronic communications data' means electronic communications content and electronic communications metadata 'electronic communications content' means the content exchanged by means of electronic communications services, **Definition of "electronic communication content** such as text, voice, videos, images, and sound 'electronic communications metadata' means data processed by means of electronic communications services for the purposes of transmitting, distributing or exchanging electronic communications content; including data used to trace **Definition of "electronic communications metadata"** and identify the source and destination of a communication, data on the location of the device generated in the context of providing electronic communications services, and the date, time, duration and the type of communication 'electronic message' means any message containing information such as text, voice, video, sound or image sent over an **Definition of "electronic message"** — electronic communications network which can be stored in the network or in related computing facilities, or in the terminal equipment of its recipient, including e-mail, SMS, MMS and functionally equivalent applications and techniques The responsibility for obtaining consent for the storage of a cookie or similar identifier lies on the entity that makes use of processing and storage capabilities of **Cookies** terminal equipment or collects information from end-users' terminal equipment, such as an information society service provider or ad network provider. appropriate safeguards, such as encryption Security and pseudonymisation. Integration to the GDPR **EDPS Position** 1. Confidentiality of electronic communications requires specific protection beyond the **GDPR** 2. The ePrivacy Directive is already in force Statement 25/05/2018 3. The proposed Regulation aims at ensuring its uniform application across every Member State and every type of data controller 4. The new Regulation must enforce the consent requirement for cookies and similar - technologies and offer services providers technical tools allowing them to obtain that A Privacy perspective consent The EDPB wishes to reiterate the positions previously adopted by data protection EDPB Position • Statement 3/2019 - 13/3/2019 — authorities in the EU, including the Opinion 1/2017 of the Article 29 Working Party and the Statement adopted on 25 May 2018. The EDPB also welcomes the inclusion of rules in Article 8 regarding the inclusion of reference to the information covered TV broadcasting services or the software updates, which should be designed in a privacy-friendly way. The EDPB also regrets the lost Statement on the ePrivacy Regulation and the future role of Supervisory opportunity to give a clear guidance on the so-called "cookie walls". Authorities and the EDPB - Adopted on 19/11/2020 Thirdly, the EDPB would like to underline that many provisions of the future ePrivacy Regulation concern processing of personal data. — Alternatives Communication The final version probably will be published not before **Expectations** The Regulation on ePrivacy will be applicable not before Red background Interventions to the latest version of the proposal Articles under discussion during the trilogue Red background and bold blu text (*) Key Yellow background and bold red text — Interventions proposed in the version of 10/02/2021 Yellow background and text striketrough — Articles deleted in the version of 10/02/2021 Copyright © Nicola Fabiano - All rights reserved