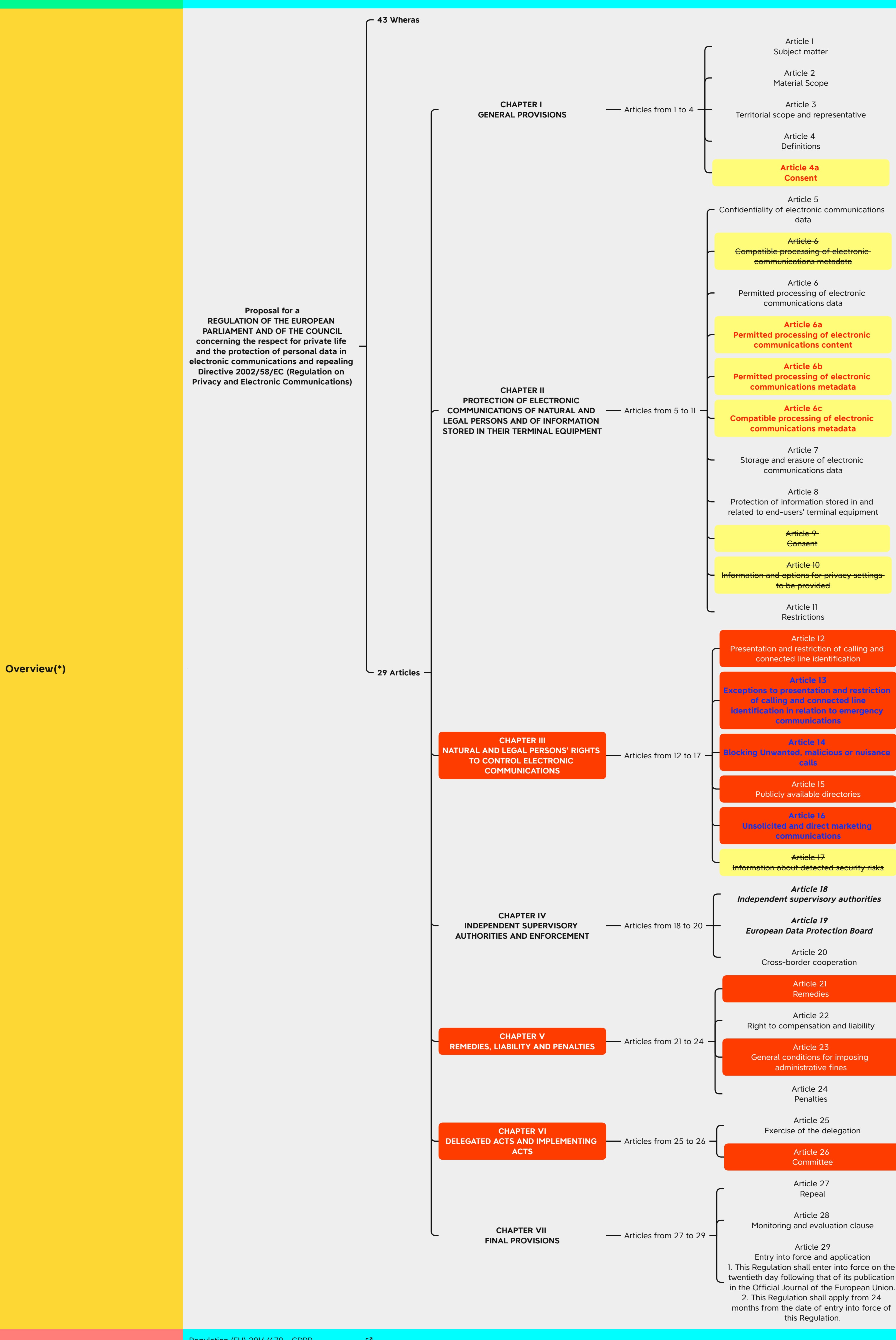


e-Privacy Regulation

Procedure number: 2017/0003/COD

Will repeal	Directive 2002/58/EC ↗
It's strictly related to the GDPR	Regulation EU 2016/679 ↗
Chronology	<ul style="list-style-type: none"> 2017 <ul style="list-style-type: none"> 10/01/2017 — Draft by the EU Commission 24/04/2017 — EDPS Opinion ↗ 26/10/2017 — Draft by the EU Parliament ↗ 2018 <ul style="list-style-type: none"> 22/3/2018 — Draft by the Bulgarian Presidency 25/5/2018 — EDPB - Statement on the revision of the ePrivacy Regulation and its impact on the protection of individuals with regard to the privacy and confidentiality of their communications ↗ 19/10/2018 — Draft by the Austrian Presidency ↗ 2019 <ul style="list-style-type: none"> 22/02/2019 — Text proposed by Romanian Council presidency 13/03/2019 — EDPB - Statement 3/2019 on an ePrivacy Regulation ↗ 20/05/2019 — Progress Report by the Romanian Presidency 12/07/2019 — Draft by the Finnish Presidency ↗ 26/07/2019 — Second Draft by the Finnish Presidency ↗ 18/09/2019 — Third Draft by the Finnish Presidency ↗ 04/10/2019 — Fourth Draft by the Finnish Presidency ↗ 2020 <ul style="list-style-type: none"> 21/02/2020 — Draft by the Croatian Council Presidency ↗ 04/11/2020 — Draft by the German Presidency ↗ 19/11/2020 — EDPB - Statement on the ePrivacy Regulation and the future role of Supervisory Authorities and the EDPB ↗ 2021 <ul style="list-style-type: none"> 05/01/2021 — Draft by the Portuguese Presidency ↗ 10/02/2021 — Draft by the EU Council of Ministers ↗ — The Member States agreed on a mandate for negotiations with the European Parliament and trilogue began on 20 May 2021 9/03/2021 — EDPB - Statement 03/2021 on the ePrivacy Regulation ↗ 20/05/2021 — Trilogue starts — 1. European Commission, 2. European Parliament, 3. Council of the European Union 4/11/2021 — New version by the Council partially accessible to the public (26.II.2021) The Slovenian Presidency of the Council of the EU invited Member States to provide their comments and remarks on the proposed 'ePrivacy' Regulation. Further inter-institutional negotiations ('trilogue') are scheduled for 18 November ↗ <ul style="list-style-type: none"> CHAPTER III <ul style="list-style-type: none"> Article 12 Article 13 Article 14 Article 15 Article 16 CHAPTER V <ul style="list-style-type: none"> Article 21 Article 23 CHAPTER VI <ul style="list-style-type: none"> Article 26 8/11/2021 — New version by the Council partially accessible to the public (26.II.2021) ↗ 12/11/2021 — New version by the Council partially accessible to the public (30.II.2021) ↗ 18/11/2021 — Trilogue ? ↗
Current status	12/11/2021 - Latest Document by the Council of the European Union



The proposal on ePrivacy in Article 4 expressly recalls the definitions laid down by the:	<ul style="list-style-type: none"> Regulation (EU) 2016/679 - GDPR ↗ Directive (EU) 2018/1972 of 11 December 2018 establishing the European Electronic Communications Code ↗ Commission Directive 2008/63/EC of 20 June 2008 on competition in the markets in telecommunications terminal equipment ↗ 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 ↗
--	--

Key-points	<p>It's <i>lex specialis</i> to the GDPR</p> <p>It completes the data protection regulation ecosystem</p> <ul style="list-style-type: none"> GDPR Charter TFEU ECHR Convention 108+ Soft Law <p>Legal basis</p> <ul style="list-style-type: none"> TFEU <ul style="list-style-type: none"> Article 16 Article 114 Charter ECHR GDPR <p>It has been considered part of the Digital Single Market Strategy (DSM Strategy)</p> <p>It applies both to natural and legal persons</p> <p>Enhancing security and confidentiality of communications (including content and metadata, e.g. sender, time, location of a communication)</p> <p>Definition of "electronic communications data" — "electronic communications data" means electronic communications content and electronic communications metadata</p> <p>Definition of "electronic communication content" — "electronic communication content" means the content exchanged by means of electronic communications services, such as text, voice, videos, images, and sound</p> <p>Definition of "electronic communications metadata" — "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 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</p> <p>Definition of "electronic message" — "electronic message" means any message containing information such as text, voice, video, sound or image sent over an 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</p> <p>Cookies — 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 terminal equipment or collects information from end-users' terminal equipment, such as an information society service provider or ad network provider.</p> <p>Security — appropriate safeguards, such as encryption and pseudonymisation.</p>
-------------------	--

A Privacy perspective	<p>Integration to the GDPR</p> <p>EDPS Position</p> <ul style="list-style-type: none"> Statement 25/05/2018 <ul style="list-style-type: none"> 1. Confidentiality of electronic communications requires specific protection beyond the GDPR 2. The ePrivacy Directive is already in force 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 consent <p>EDPB Position</p> <ul style="list-style-type: none"> Statement 3/2019 - 13/3/2019 <ul style="list-style-type: none"> The EDPB wishes to reiterate the positions previously adopted by data protection authorities in the EU, including the Opinion 1/2017 of the Article 29 Working Party and the Statement adopted on 25 May 2018. Statement on the ePrivacy Regulation and the future role of Supervisory Authorities and the EDPB - Adopted on 19/11/2020 <ul style="list-style-type: none"> 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 opportunity to give a clear guidance on the so-called "cookie walls". Thirdly, the EDPB would like to underline that many provisions of the future ePrivacy Regulation concern processing of personal data. <p>Communication — Alternatives</p>
------------------------------	---

Expectations	<ul style="list-style-type: none"> The final version probably will be published not before 2023 The Regulation on ePrivacy will be applicable not before 2025
---------------------	---

(* Key)	<ul style="list-style-type: none"> Red background — Interventions to the latest version of the proposal Red background and bold blue text — Articles under discussion during the trilogue Yellow background and bold red text — Interventions proposed in the version of 10/02/2021 Yellow background and text strikethrough — Articles deleted in the version of 10/02/2021
----------------	--