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## REMARKS

### on the timeline of the ePrivacy Regulation COM(2017)0010

Berlin/Brussels, 30 May 2017

The General Data Protection Regulation (GDPR) was passed in April 2016. Since then regulators across Europe worked on interpretations and adaptation to what often was described as the basis for “a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance of creating the trust that will allow the digital economy to develop across the internal market.” (Regulation (EU) 2016/679 Recital 7).

The Proposal for a Regulation on Privacy and Electronic Communications<sup>1</sup> (ePR) presented by the European Commission on 10 January 2017 however, puts several principles of the GDPR in question<sup>2</sup>.

With its strict timeline tabling the conclusion of the legislative act on the ePR in the fourth quarter of 2017 and planning the ePR to come into effect on the same day as the GDPR (25 May 2018) the question of whether such a rash and precipitate schedule seems contestable.

Another central problem derives from the close intertwining of the ePR and the European Electronic Communications Code<sup>3</sup> (EECC), which has yet to be decided upon and is still undergoing legislative process. This makes passages in the ePR referencing to the EECC problematic as they are still subject to change.

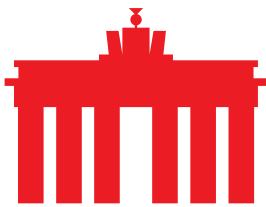
These problems in correlation with the general principles of legislation lead to the conclusion that the timeframe for the ePR is too ambitious. Thus, eco endorses the position of postponing the schedule for the ePR and extend the timeline for consultations and revision of its content. The postponing would additionally also allow companies to properly prepare for and adapt to the regulation. eco is seeing the following reasons as significant for its position:

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<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 (COM(2017)0010)

<sup>2</sup> A comprehensive Version commentation of the draft ePR can be viewed online at: [https://www.eco.de/wp-content/blogs.dir/20170228\\_eco\\_pos\\_eprivacyreg\\_en-final.pdf](https://www.eco.de/wp-content/blogs.dir/20170228_eco_pos_eprivacyreg_en-final.pdf)

<sup>3</sup> Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) (COM(2015)590)



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- **Overlap with GDPR creates necessity to revise ePR schedule**

The principle of the GDPR in relation to the ePR is that the latter is regarded as a *lex specialis* prevailing over the former. This means that for many instances the ePR's provisions will be binding as electronic communications are concerned. Companies, which have already started adjusting to the GDPR, will now have to re-assess processes, business cases and contracts. This is bound to take its time. With the current schedule for the ePR targeting the fourth quarter of 2017 for the passing of the legislation only few months will remain until it is planned to come into effect on 25 May 2018. This timeframe will impose additional burden on the industry – especially when it has already taken steps towards complying with the GDPR.

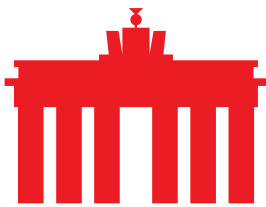
Additional time after passing the legislation and allowing it to come into effect will have to take at least 18 months for serious preparation for the mentioned cases. Experience from the implementation of the GDPR has shown that the timeframe for adaptation of two years already poses a serious challenge for companies with several reports pointing towards the problem, that it might not suffice. To ignore this problem when elaborating the ePR is negligent.

- **EECC is tabled for autumn 2017 and has several provisions impacting ePR**

Several definitions and provisions of the ePR base upon or refer to the EECC which is currently being negotiated. Some definitions of the EECC are even being extended beyond the original scope of the regulation.

This, however, skews the regulatory field intended by the EECC and creates a new, broader field for regulation making impact – especially on OTT-2 services, which will have to comply with portions of the GDPR and the ePR. One has also to take into account that the definition as stated in the EECC is currently being negotiated and subject to possible change. In order to avoid mismatching definitions and relations between them, it would be appropriate to first clarify the definitions of the EECC before moving to the ePR.

Article 12 ePR (Presentation and restriction of calling and connected line identification) is closely related to the draft of Article 107 EECC and its Annex VI Part B, where the presentation of the calling number is regulated, which would scatter the regulation in this field and would make compliance for companies more difficult – especially when taking into account that the ePR as a regulation will prevail over the EECC being merely a directive making the latter seem obsolete. This can further be held up for Article 13 ePR, which is interrelated with Article 107 EECC and its Annex VI Part B as well as Article 14 ePR where EECC Annex VI Part A Letter (b) gives also advise on the topic.



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As to Article 15 of the ePR there are also provisions of the draft EECC which have to be taken into account when further elaborating on publicly available directories but would only be helpful once the Article 104 of the EECC is finalized.

Article 95 EECC (in connection with Article 97) is making provisions for information to be provided by the operator of a service. This again relates to the BEREC regulation and guidelines which are to be developed by BEREC until 18 months after the EECC is coming into effect. All of these provisions however closely relate to the restrictions posed by Article 7 of the ePR.

Until the guidelines proposed by BEREC come into effect uncertainty for providers of electronic communications will be the result.

- **Timeframe is too ambitious and collides with Commission's principles of "better regulation"**

The European Commission's Guidelines on Better Regulation (SWD(2015)111) state that "Respect for the requirements of legislative drafting plays an important role in achieving the goal of legal certainty." Seeing that the problems described above largely derive from primary law and do not take into account that Implementing and Delegated Acts can be delivered by the Commission on ePR, GDPR and EECC the aspects of the requirements of better regulation should be considered and the timeline for the ePR should necessarily be extended.

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## About eco

eco – Association of the Internet Industry fosters all companies that create economic value with or in the Internet and represents their interests. The association currently represents more than 1,000 member companies.

These include, among others, ISPs (Internet Service Providers), carriers, hardware and software suppliers, content and service providers, and communication companies. eco is the largest national Internet Service Provider association in Europe.