The new ePrivacy Regulation – Does the data protection reform open the way for a digital Europe?

Introductory statement - Ingo Schwarz
Overview

I. Modernising Data Privacy
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1. Modernising Data Privacy

1. Aims of the EU data protection reform

- Data protection law in the EU
  - modernisation
  - harmonisation
- Strengthening of the European digital economy / digital single market
- COM – further project: „Digital Service Act“

„A Union that strives for more“
Agenda for 2019 – 2024
I. Modernising Data Privacy

2. Stand of the EU Legislation

GDPR
- In force since May 25, 2018

Creates
- legal uncertainty
- much more bureaucracy

ePR - Proposal
- COM: January 10, 2017
- EP: October 24, 2017
- Counsil / WP Tele
  - COREPER/Trilog?
    → not contemporary
    → Regulation or Directive?

Not achieved: GDPR and ePR - enter into force at the same time
I. Modernising Data Privacy

3. Draft: ePR – Scope and relevance

Strengthening of the digital economy in Europe?

- ePrivacy
  → plays a fundamental role for a digital Europe

- A lack of an adopted ePrivacy
  → increase legal uncertainty

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3. Draft: ePR – Scope and relevance

**ePR → Scope of Application**

- Concerns the provision and use of electronic communications services
  → Processing of electronic communications content/metadata
- End-users terminal equipment protection of information
- Offering of a publicly available directory of end-users of electronic communications services
- Sending of direct marketing communications to the end-users

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II. Consequences and demands – Point of view of the economy

Demands of the economy

Data protection law
- has to accompany and promote digitisation, not hinder it
- must consider the needs of the SMEs
- has to avoid
  → the increasing of data privacy requirements in the adaption legislation
  → especially high financial and HR costs
- Companies must be able to continue using well established and legitimate business models
II. Consequences and demands – Point of view of the economy

ePR – Controversial subjects

Permission to process of electronic communication content

- Only with the consent of the requesting end-user?

- Even for the purpose of requested services?

→ Equal international standards?
→ Practicable?

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**II. Consequences and demands – Point of view of the economy**

**ePR – Controversial subjects**

ePR-compliant data processing must be possible to continue on the legal basis of contract, legitimate interests, and consent.

- e.g. big data, IoT, internet platforms
II. Consequences and demands – Point of view of the economy

**ePR – Controversial subjects**

- Compatible processing of electronic communications metadata?
- Processing of location data?
- Access to the „end-users terminal-equipment“ Information? E.g. „third party cookies“
- Requirements on privacy setting options for Software / for browser designer
- Direct advertising
  - only with consent?
  - even in cases of display advertising?
II. Consequences and demands – Point of view of the economy

To create a digital Europe - There will be still lots of work ahead of us.
Ingo Schwarz
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Vielen Dank für Ihre Aufmerksamkeit!

Thank you for your attention!