

EUROPEAN PARLIAMENT

1999



2004

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

PROVISIONAL
2000/0189(COD)

12 March 2002

*****II**

DRAFT RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and Council directive concerning the processing of personal data and the protection of privacy in the electronic communications sector
(15396/2/2001 – C5-0035/2002 – 2000/0189(COD))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Marco Cappato

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
PROCEDURAL PAGE.....	4
DRAFT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT	20

PROCEDURAL PAGE

At the sitting of 13 November 2001 Parliament adopted its position at first reading on the proposal/amended proposal for a European Parliament and Council directive concerning the processing of personal data and the protection of privacy in the electronic communications sector (COM(2000) 385 - 2000/0189 (COD)).

At the sitting of 6 February 2002 the President of Parliament announced that the common position had been received and referred to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (15396/2/2001 - C5-0035/2002).

The committee had appointed Marco Cappato rapporteur at its meeting of 29 August 2000.

It considered the common position and draft recommendation for second reading at its meeting(s) of

At the last it adopted the draft legislative resolution by ... votes to ..., with ... abstention(s)/unanimously.

The following were present for the vote: ..., chairman/acting chairman; ... (and ...), vice-chairman/vice-chairmen; ..., rapporteur; ..., ... (for ...), ... (for ... , pursuant to Rule 153(2)), ... and

The recommendation for second reading was tabled on 7 March 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive concerning the processing of personal data and the protection of privacy in the electronic communications sector (15396/2/2001 – C5-0035/2002 – 2000/0189(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (15396/2/2001 – C5-0035/2002),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2000) 385²),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0000/2002),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C

² OJ C C 365, 19.12.2000, p. 223.

Amendment 1

Recital 11

(11) Like Directive 95/46/EC, this Directive **does not address** issues of protection of fundamental rights and freedoms related to activities which are not governed by Community law. **Therefore it does not alter the existing balance between the individual's right to privacy and the possibility for Member States to take such measures, as are referred to in Article 15(1) of, necessary** for the protection of public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) **and** the enforcement of criminal law. **Consequently, this Directive does not affect the ability of Member States to carry out** lawful interception of electronic communications **or take other measures**, if necessary for any of these purposes **and in accordance with the European Convention of Human Rights and Fundamental Freedoms. Such measures must be appropriate, strictly proportionate to the intended purpose and necessary within a democratic society.**

(11) Like Directive 95/46/EC, this Directive **addresses** issues of protection of fundamental rights and freedoms, related to activities which are governed by Community law. **In taking measures** for the protection of public security, defence and State security (including the economic well-being of the State when the activities relate to State security matters) **and for** the enforcement of criminal law, **and in carrying out** lawful interception of electronic communications if necessary for any of these purposes, **Member States should act on the basis of a specific law which is comprehensible to the general public, and the measures should be entirely exceptional, authorised by the judicial or other competent authorities on a case-by-case basis and for a limited duration, appropriate, proportionate and necessary within a democratic society. Under the European Convention on Human Rights and pursuant to rulings issued by the European Court of Human Rights, any form of wide-scale general or exploratory electronic surveillance is prohibited.**

(Reinstates Amendment 4 at first reading A5-0374/2001)

Justification

Recalls the principles spelled by the European Court of Human Rights in its jurisprudence on privacy and the considerations of the art. 29 Working Party on the protection of privacy.

Amendment 2

Recital 21

(21) Measures should be taken to prevent unauthorised access to communications in order to protect the confidentiality of communications, including both the contents and any data related to such communications, by means of public communications networks and publicly available electronic communications services. ***National legislation in some Member States only prohibits intentional unauthorised access to communications.***

(21) Measures should be taken to prevent unauthorised access to communications in order to protect the confidentiality of communications, including both the contents and any data related to such communications, by means of public communications networks and publicly available electronic communications services. ***These measures should include the facilitation of proven cryptography and anonymisation or pseudonymisation tools.***

(Reinstates Amendment 6 at first reading A5-0374/2001)

Justification

Effective protection cannot rely on legal measures only, whatever their scope. The general availability of adequate tools must be ensured.

Amendment 3
Recital 28

(28) ***The obligation to erase traffic data or to make such data anonymous when it is no longer needed for the purpose of the transmission of a communication does not conflict with such procedures on the Internet as the caching in the Domain Name System of IP-addresses or the caching of IP-addresses to physical address bindings or the use of log in information to control the right of access to networks or services.*** ***delete***

Justification

No similar text was in the Commission proposal or in the EP first reading text. The meaning and aims of this recital added by the Council are rather unclear and confusing.

Amendment 4
Recital 38

(38) Directories of subscribers to electronic communications services are widely distributed and **public**. The right to privacy of natural persons and the legitimate interest of legal persons require that subscribers **are able** to determine **whether** their personal data are published in a directory **and if so, which**. **Providers of public directories should inform the subscribers to be included in such directories of the purposes of the directory and of any particular usage which may be made of electronic versions of public directories especially through search functions embedded in the software, such as reverse search functions enabling users of the directory to discover the name and address of the subscriber on the basis of a telephone number only.**

(38) Directories of subscribers to electronic communications services are widely distributed and **publicly available**. The right to privacy of natural persons and the legitimate interest of legal persons require that subscribers **should be entitled, free of charge, to be omitted at their request or to determine the extent to which** their personal data are published in a directory.

(Reinstates Amendment 16 at first reading A5-0374/2001)

Justification

Keeps the current opt-out system on public directories, that gives the right to subscribers to be omitted or to have some personal data omitted from a directory on request; introduces the fact that this operation has to be free of charge for the subscriber.

Amendment 5
Recital 40

(40) Safeguards should be provided for subscribers against intrusion of their privacy by unsolicited communications for direct marketing purposes **in particular by means of automated calling machines, telefaxes, and e-mails, including SMS messages. These forms of unsolicited**

(40) Safeguards should be provided for subscribers against intrusion of their privacy by means of unsolicited **calls, telefaxes, electronic mails and other forms of** communications for direct marketing purposes. **Member States may limit such safeguards to subscribers who**

commercial communications may on the one hand be relatively easy and cheap to send and on the other may impose a burden and/or cost on the recipient. Moreover, in some cases their volume may also cause difficulties for electronic communications networks and terminal equipment. For such forms of unsolicited communications for direct marketing, it is justified to require that prior explicit consent of the recipients is obtained before such communications are addressed to them. The single market requires a harmonised approach to ensure simple, Community-wide rules for businesses and users.

are natural persons.

(see recital 21 of COM(2000) 385)

Justification

This amendment reintroduces recital 21 of the Commission text concerning unsolicited communications. This text is neutral in respect of the (opt-out or opt-in) system adopted for the different means of communication, and can help in the perspective of finding compromises with the Council.

Amendment 6 Recital 41

(41) However, within the context of an existing customer relationship, it is reasonable to allow the use of electronic contact details for the offering of ***similar products or services as those originally purchased by the customer***, but only by the same company that has obtained the contact details directly from the customer. When contact details are obtained, the customer should be informed about their further use for direct marketing in a clear manner, and be given the opportunity to refuse such usage. This opportunity should continue to be offered with each

(41) However, within the context of an existing customer relationship, it is reasonable to allow the use of electronic contact details for the offering of products or services, but only by the same company that has obtained the contact details directly from the customer. When contact details are obtained, the customer should be informed about their further use for direct marketing in a clear manner, and be given the opportunity to refuse such usage. This opportunity should continue to be offered with each subsequent direct marketing message, free of charge, except

subsequent direct marketing message, free of charge, except for any costs for the transmission of this refusal.

for any costs for the transmission of this refusal.

Justification

The amendment endorses the Council text with a slight modification: the notion of "similar" product is too vague.

Amendment 7

Recital 44

(44) *Direct marketing activities carried out by political, charity or other organisations, for instance activities aimed at recruiting new members, fund raising or lobbying for votes, are included in the concept of direct marketing as established by Directive 95/46/EC. Messages by political organisations or others for purposes other than direct marketing, for example the expression of views, thoughts and ideas, are not covered by the provisions on unsolicited communications of this Directive.* **delete**

Justification

This recital has been added by the Council and was not in the Commission nor in the EP text. The distinction introduced between direct marketing activities ("aimed at recruiting new members, fund raising or lobbying for votes") and other activities ("expression of views, thoughts and ideas") is artificial because these activities – that are at the basis of and a reason for the existence of associations, charities and parties - are intermingled and linked between each other.

Amendment 8 Article 1, paragraph 3

3. This Directive shall not apply to activities which fall outside the scope of the Treaty *establishing the European Community, such as those covered by Titles V and VI of the Treaty on European Union, and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law.*

3. This Directive shall not apply to activities which fall outside the scope of the *EC* Treaty.

(Reinstates Amendment 18 at first reading A5-0374/2001)

Justification

Amendment 9
Article 6, paragraph 1

1. Traffic data relating to subscribers and users processed and stored by the provider of a public communications network or ***publicly available electronic communications*** service must be erased or made anonymous ***when it is no longer needed for the purpose of the transmission of a communication without prejudice to*** paragraphs 2, 3, 5 ***of this Article and Article 15(1).***

1. Traffic data relating to subscribers and users processed ***for the purpose of the transmission of a communication*** and stored by the provider of a public communications network or service must be erased or made ***irreversibly*** anonymous ***upon completion of the transmission, with due regard for the requirements of*** paragraphs 2, 3 and 4, ***and so as to allow paragraph 6 to be properly implemented.***

(Reinstates Amendment 27 at first reading A5-0374/2001)

Justification

The reference to art. 15 (1), that was not in the Commission text nor in the EP text, shall be deleted.

Amendment 10

Article 12, paragraph 1

1. Member States shall ensure that subscribers are informed, free of charge, about the purpose(s) of printed or electronic directories of subscribers available to the public or obtainable through directory enquiry services, in which their personal data can be included and of any further usage possibilities based on search functions embedded in electronic versions of the directory.

1. Member States shall ensure that subscribers are informed, free of charge **and before they are included in the directory**, about the purpose(s) of a printed or electronic directory of subscribers available to the public or obtainable through directory enquiry services, in which their personal data can be included and of any further usage possibilities based on search functions embedded in electronic versions of the directory.

(Reinstates Amendment 33 at first reading A5-0374/2001)

Justification

EP first reading amendment concerning information to be provided to subscribers before they are included in a directory.

Amendment 11
Article 12, paragraph 2

2. Member States shall ensure that subscribers are given the opportunity, to determine whether their personal data are included in a public directory, and if so, which, to the extent that such data are relevant for the purpose of the directory as determined by the provider of the directory, and to verify, correct or withdraw such data. Not being included in a public subscriber directory, verifying, correcting or withdrawing personal data from it shall be free of charge.

2. Personal data contained in printed or electronic directories of subscribers available to the public or obtainable through directory enquiry services shall be limited to what is necessary to identify a particular subscriber, unless the subscriber has given his unambiguous consent to the publication of additional personal data. The subscriber shall be entitled, free of charge, to be omitted from a printed or electronic directory at his or her request, to determine which data may be listed, to verify, correct or withdraw such data, to indicate that his or her personal data may not be used for the purpose of direct marketing, to have his or her address omitted in part and not to have a reference revealing his or her sex,

where this is applicable linguistically.

(Reinstates Amendment 34 at first reading A5-0374/2001)

Justification

Keeps the current opt-out system on public directories, that gives the right to subscribers to be omitted or to have some personal data omitted from a directory on request; introduces the fact that this operation has to be free of charge for the subscriber.

Amendment 12
Article 13, paragraph 1

1. The use of automated calling systems without human intervention (automatic calling machines), facsimile machines (fax) or **electronic mail** for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent.

1. The use of automated calling systems without human intervention (automatic calling machines), facsimile machines (fax) or **SMS (short message service available on mobile phones)** for the purpose of direct marketing may be only allowed in respect of subscribers who have given their prior consent.

(Reinstates Amendment 35 at first reading A5-0374/2001)

Justification

EP first reading amendment on the means of communication falling in the opt-in regime when used for direct marketing. Excludes electronic mail while including SMS.

Amendment 13
Article 13, paragraph 2

2. Notwithstanding paragraph 1, where a natural or legal person obtains electronic contact details for electronic mail directly from its customers, in the context of the purchase of a product or a service, in accordance with Directive 95/46/EC, the same natural or legal person may use these

2. Notwithstanding paragraph 1, where a natural or legal person obtains electronic contact details for electronic mail directly from its customers, in the context of the purchase of a product or a service, in accordance with Directive 95/46/EC, the same natural or legal person may use these

electronic contact details for direct marketing of its own *similar* products or services, provided that customers clearly and distinctly are given the opportunity to object, free of charge and in an easy manner, to such use of electronic contact details when they are collected and on the occasion of each message where the customer has not initially refused such use.

electronic contact details for direct marketing of its own products or services, provided that customers clearly and distinctly are given the opportunity to object, free of charge and in an easy manner, to such use of electronic contact details when they are collected and on the occasion of each message where the customer has not initially refused such use.

Justification

The amendment endorses the Council text with a slight modification: the notion of "similar" product is too vague.

Amendment 14 Article 13, paragraph 6

6. The Commission shall submit to the European Parliament and the Council, not later than three years after the date of application of this Directive referred in Article 17(1) by Member States, a report on the effects on consumers and economic operators of this Article, taking into account the international environment. Where appropriate, the Commission shall submit proposals for the amendment of this provision to take account of the results of the abovementioned report and any changes in the sector and any other proposal it may deem necessary. *delete*

Justification

The EP had adopted in its first reading an amendment that asked to the Commission to draft a report on the implementation of the whole directive. The Council has restricted the scope of the abovementioned report only to the aspects linked to article 13. It is necessary to delete this provision and reintroduce the relevant EP first reading text after article 18.

Amendment 15
Article 14, paragraph 3

3. *Where required, the Commission shall adopt measures* to ensure that terminal equipment is constructed in a way that is compatible with the right of users to protect and control the use of their personal data, in accordance with Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity⁽¹⁾ and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and communications⁽²⁾

(1)OJ L 91, 7.4.1999, p. 10.

(2)OJ L 36, 7.2.1987, p. 31. Decision as last amended by the 1994 Act of Accession.

3. *As concerns arise with categories of products, measures may be adopted where necessary* to ensure that terminal equipment is constructed in a way that is compatible with the right of users to protect and control the use of their personal data, in accordance with Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity⁽¹⁾ and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and communications⁽²⁾.

(1)OJ L 91, 7.4.1999, p. 10.

(2)OJ L 36, 7.2.1987, p. 31. Decision as last amended by the 1994 Act of Accession.

(Reinstates Amendment 36 at first reading A5-0374/2001)

Justification

This amendment reintroduces EP first reading text in order to clarify when the Commission shall intervene imposing technical standards.

Amendment 16
Article 15, paragraph 1

1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1)(2)(3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary measure to safeguard national security, (*i.e. State security*) defence, public security or the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communications system, as referred to in Article 13(1) of Directive 95/46/EC. ***To this end Member States may inter alia provide for the retention of data for a limited period justified on the grounds laid down in this paragraph, in accordance with the general principles of Community law.***

1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1)(2)(3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary, ***appropriate, proportionate and temporary measure within a democratic society*** to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as referred to in Article 13(1) of Directive 95/46/EC. ***These measures shall be entirely exceptional, based on a specific law which is comprehensible to the general public, and shall be authorised by the judicial or other competent authorities on a case-by-case basis. Under the European Convention on Human Rights and pursuant to rulings issued by the European Court of Human Rights, any form of wide-scale general or exploratory electronic surveillance is prohibited.***

(Reinstates Amendment 37 at first reading A5-0374/2001)

Justification

Recalls the principles spelled by the European Court of Human Rights in its jurisprudence on privacy and the considerations of the art. 29 Working Party on the protection of privacy.

Amendment 17 Article 15, paragraph 3

3. The Working Party on the Protection of Individuals with regard to the Processing of Personal Data instituted by Article 29 of Directive 95/46/EC shall also carry out the tasks laid down in Article 30 of that Directive with regard to matters covered by this Directive, namely the protection of

3. The Working Party on the Protection of Individuals with regard to the Processing of Personal Data instituted by Article 29 of Directive 95/46/EC shall also carry out the tasks laid down in Article 30 of that Directive with regard to matters covered by this Directive, namely the protection of

fundamental rights and freedoms and of legitimate interests in the electronic communications sector.

fundamental rights and freedoms and of legitimate interests in the electronic communications sector. ***The Working Party shall give interested parties the opportunity to comment within a reasonable time-frame and shall take their views into full account.***

(Reinstates Amendment 38 at first reading A5-0374/2001)

Justification

Possible compromise between EP first reading amendment and the Council text.

Amendment 18
Article 16, paragraph 2

2. ***Where the personal data of subscribers to fixed public voice telephony services have been included in a public subscriber directory in conformity with the provisions of Article 11 of Directive 97/66/EC before the national provisions adopted in pursuance of this Directive enter into force, the personal data of such subscribers may remain included in this public directory in its printed or electronic versions, unless subscribers indicate otherwise, after having received complete information about purposes and options in accordance with Article 12 of this Directive.*** ***delete***

Justification

No transitional arrangement is needed if the current opt-out system on directories is kept in the EP second reading recommendation.

Amendment 19
Article 18a (new)

The Commission shall submit to the European Parliament and the Council, not later than three years after the date of application of this Directive, a report on its implementation, on its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, and on measures taken by Member States according to art. 15 (1). For this purpose, the Commission may request information from the Member states which shall be supplied without undue delay. Where appropriate, the Commission shall submit proposals to amend this Directive, taking account of the results of that report, any changes in the sector and any other proposal it may deem necessary in order to improve the effectiveness of this Directive.

(Reinstates Amendment 42 at first reading A5-0374/2001 with an addition)

Justification

The EP had adopted in its first reading an amendment that asked to the Commission to draft a report on the implementation of the whole directive. The Council has restricted the scope of the abovementioned report only to the aspects linked to article 13. It is necessary to delete this provision and reintroduce the relevant EP first reading text.

EXPLANATORY STATEMENT

The European Parliament has been asked for its opinion at second reading on the Commission proposal for a directive concerning the processing of personal data and the protection of privacy in the electronic communications sector (COM(2000) 385). The proposal seeks to amend and update Directive 97/66EC of the European Parliament and the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector, so as to take account of new and foreseeable technological developments.

At first reading, the rapporteur expressed reservations about the usefulness and effectiveness of such detailed regulations governing privacy in the electronic communications sector, taking the view that the provisions already existing at European level (adopted either by the Council of Europe or the European Union, such as basic Directive 95/46/EC on the processing of personal data) could be applied in order to achieve the same aim, thus avoiding the risk of over-regulation. It was also important to prevent privacy provisions from creating a 'two-tier' system which imposed excessively restrictive standards in the private sector while leaving Member States with a free hand to intrude into the private lives of their citizens - for example by imposing on service providers 'policing' obligations such as the storage of data on traffic or even on the content of electronic communications. At the same time, however, one of the most important of the fundamental freedoms, namely freedom of expression, should not be restricted on the pretext of protecting the privacy of individuals against unsolicited communications (an area which comes more within the sphere of consumer protection than that of fundamental rights).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and subsequently, at first reading, the European Parliament, adopted the rapporteurs proposals for radical alterations to the directive, some of the most important points of which were totally recast. (For an overview of the substance of the proposal for a directive and the positions adopted by the institutions during the codecision procedure, see the summary table given below, the legislative texts and the justifications and statements of reasons attached to the various texts). Parliament's first reading was followed by that of the Council, which adopted a common position on which Parliament must now give its opinion.

The rapporteur regrets the fact that the Council has taken over very few of Parliament's proposals and that the two institutions' positions on almost all the main points of the proposal for a directive are so far apart (see table). The Commission has endorsed the Council common position despite the fact that it explicitly provides for derogations from the privacy rules for Member States, as regards storing data on the electronic communications of private citizens. The Commission's concerns about the introduction of such provisions are set out in a communication from the Commission attached to the Council common position.

At second reading, the rapporteur considers it necessary - not least for the purposes of institutional consistency - to retable the amendments on essential points that were adopted by Parliament at first reading and not taken over by the Council, in the hope that his colleagues are prepared to support them once again and that the Commission and the Council are willing actively to seek a compromise with Parliament, possibly at second reading.

	COMMISSION PROPOSAL	EUROPEAN PARLIAMENT - FIRST READING	COUNCIL - FIRST READING	EUROPEAN PARLIAMENT - SECOND READING: AMENDMENTS TABLED BY RAPporteur
Directories of subscribers Article 12	Opt-in (subscribers' prior consent must be sought to the publication of their data in directories of subscribers)	Free opt-out (retention of system introduced by Directive 97/66/EC under which subscribers are entitled to be left out of directories; it is proposed that this procedure be henceforth free of charge)	Opt-in with transitional system which retains the possibility of opting out for subscribers included in directories already on the market	Free opt-out (retention of system introduced by Directive 97/66/EC under which subscribers are entitled to be left out of directories; it is proposed that this procedure be henceforth free of charge) <i>Amendments 4, 10, 11 and 18</i>
Unsolicited communications Article 13	- opt-in for automatic calling devices, fax and e-mail for the purposes of direct marketing; - for rest, possibility for Member States to choose between opt-out and opt-in;	- opt-in for automatic calling devices, fax and SMS for the purposes of direct marketing, but opt-out for communications between enterprises and their customers ; - for rest (including e-mail), possibility for Member States to choose between opt-out and opt-in; - prohibition on disguising or concealing the identity of the sender and failing to supply a valid address for opt-out purposes; - right to ask service providers to use technical solutions which allow subscribers to view the sender and subject line of e-mails, without having to download the rest of the e-mail;	- opt-in for automatic calling devices, fax and e-mail for the purposes of direct marketing, but opt-out for communications between enterprises and their customers ; - for rest, possibility for Member States to choose between opt-out and opt-in; - prohibition on disguising or concealing the identity of the sender and failing to supply a valid address for opt-out purposes;	- opt-in for automatic calling devices, fax and SMS for the purposes of direct marketing, but opt-out for communications between enterprises and their customers ; - for rest (including e-mail), possibility for Member States to choose between opt-out and opt-in; - prohibition on disguising or concealing the identity of the sender and failing to supply a valid address for opt-out purposes; <i>Amendments 5, 6, 12 and 13</i>

	COMMISSION PROPOSAL	EUROPEAN PARLIAMENT - FIRST READING	COUNCIL - FIRST READING	EUROPEAN PARLIAMENT - SECOND READING: AMENDMENTS TABLED BY RAPPORTEUR
<p>Traffic data Articles 1(3) and 15(1)</p>	<p>- general principle: traffic data must be erased once the period laid down for the subscriber to be billed and the bill to be challenged has expired;</p> <p>- scope: the directive does not apply to activities which fall outside the scope of the EC Treaty, such as those governed by Titles V and VI of the Treaty on European Union;</p> <p>- exception clause: the directive does not apply to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law.</p>	<p>- traffic data must be erased once the period laid down for the subscriber to be billed and the bill to be challenged has expired;</p> <p>- the directive does not apply to activities which fall outside the scope of the EC Treaty</p> <p>- introduces the case law of the European Court of Human Rights in privacy matters into the directive: in taking measures for the protection of public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters), the enforcement of criminal law, and in carrying out lawful interception of electronic communications if necessary for any of these purposes, Member States have to act on the basis of a specific law which is comprehensible to the general public, and the measures have to be entirely exceptional, authorised by the judicial or competent authorities for individual cases and for a limited duration, appropriate, proportionate and necessary within a democratic society. Under the European Convention on Human Rights and pursuant to rulings issued by the Court of Human Rights, any form of wide-scale general or exploratory electronic surveillance is prohibited.</p>	<p>- traffic data must be erased once the period laid down for the subscriber to be billed and the bill to be challenged has expired;</p> <p>- the directive does not apply to activities which fall outside the scope of the EC Treaty, such as those governed by Titles V and VI of the Treaty on European Union;</p> <p>- the directive does not apply to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law;</p> <p>- incorporates some components of the case law of the European Court of Human Rights, but in a recital, explicitly provides for the possibility of Member States storing data (does not specify if only traffic data or also data on content) relating to communications.</p>	<p>- all the first-reading amendments are reinstated <i>Amendments 1, 2, 3, 8, 9 and 16</i></p>

	COMMISSION PROPOSAL	EUROPEAN PARLIAMENT - FIRST READING	COUNCIL - FIRST READING	EUROPEAN PARLIAMENT - SECOND READING: AMENDMENTS TABLED BY RAPPORTEUR
cookies	No reference to cookies	An amendment prohibits 'spyware' and provides for user information and choice regarding cookies.	Text is clarified by making a clear distinction between spyware and cookies; users to have the right to information on cookies and to choose whether to accept them or not.	<i>The rapporteur is not tabling any amendments to the Council text at this stage, but intends to check whether it can be amended and further clarified</i>
Revision clause	No revision clause	General revision clause inserted: Commission to draw up a report on the directive's implementation and its effects on economic operators and consumers, on the basis of which it may submit proposals for the modification of the directive.	Revision clause restricted to Article 13: covers only Article 13 on unsolicited communications.	General revision clause reinstated and amended along the lines of similar clauses appearing in the other directives in the telecommunications package; the Commission can also ask the Member States for information. <i>Amendments 14 and 19</i>
Technical features and standardisation Article 14	Provides for the possibility of the Commission adopting, where required , measures to ensure that terminal equipment incorporates the necessary safeguards to guarantee the protection of personal data and privacy of users and subscribers.	Stipulates that where concerns arise with categories of products, it may be necessary to intervene.	Takes over the Commission text.	Reinstates the amendment adopted at first reading. <i>Amendment 15</i>

	COMMISSION PROPOSAL	EUROPEAN PARLIAMENT - FIRST READING	COUNCIL - FIRST READING	EUROPEAN PARLIAMENT - SECOND READING: AMENDMENTS TABLED BY RAPPORTEUR
Messages by political organisations or others Recital 44 of Council text	No direct reference	No direct reference	Inserts a recital making a distinction between direct marketing activities (aimed at recruiting new members, fund raising or lobbying for votes) which fall within the directive's scope, and other activities which do not.	Proposes that the recital inserted by the Council be deleted. <i>Amendment 7</i>