



ePrivacy: EDiMA reaction to the October Presidency text on articles 1 to 5 and recitals

Confidentiality of Communications: Unlike telephone services, digital communications applications need to process and store communications data in a variety of ways in order to deliver communications content onwards to its intended recipients. In order to provide the service and features users expect from digital communications apps (e.g. strong spam and malware filtering, automated inbox organisation etc.) they rely on the processing of both electronic communication content and metadata. The Regulation's scope should be clarified by focusing Article 5 and related provisions on unauthorised access to communications during transmission allowing an electronic communication service to process data to provide a requested service.

- **EDiMA Recommendation:** Any confidentiality requirement under Article 5 should only apply to interception during transmission of communications. It should be clarified that 'interception' refers to unauthorised access to communications in transit and not to all forms of legitimate 'processing' of such communications.

Periodic Reminders: Choice, transparency, and control, are crucial elements for user privacy. We welcome the reinforcement of the principle outlined in the GDPR, that relevant settings may be an appropriate way for users to express their choice. While allowing end-users to request not to receive periodic reminder under Article 9 (3) (i.e. article 4a under the Council text) is an improvement to the text, EDiMA fears that this provision is still overly prescriptive in nature. As such it risks creating "notification fatigue" among users, which would paradoxically undermine their ability to make informed choices.

- **EDiMA Recommendation:** In order to avoid notification fatigue among users, EDiMA would recommend removing the periodic reminders requirement under Article 9(3) (i.e. article 4a under the Council text).

Ancillary Communication: Despite the clarification introduced under (new) recital 11a, we still see little value in expanding the scope to cover communication services that are ancillary to another service, as we fear that a great deal of online activities would fall under the scope of the proposal. Imposing the same requirements on a minor feature as will apply to national telecoms operators and to global communication providers will for instance result in many innovative companies choosing not to offer communication functions to EU customers, reducing the attractiveness of their services.

- **EDiMA Recommendation:** In order to avoid overly burdensome rules on minor ancillary features, EDiMA support its removal from the proposal's scope.