

HOTREC note on a proposal for Regulation on Privacy and Electronic Communications

Context

On 10th January 2017, the European Commission issued a proposal of Regulation concerning the respect of private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications) – [COM\(2017\)10final](#).

The Commission aims at reinforcing trust and security in the Digital Single Market - a key objective of the Digital Single Market Strategy. The new Regulation also aims at aligning the rules for electronic communications services with the General Data Protection Regulation ([Regulation 2016/279](#)).

Main objectives of the proposed Regulation

The main objectives of the proposed Regulation are the following:

- **Spam and direct market communications require prior consent** – Users must provide consent before unsolicited commercial communications are addressed to them (sms; e-mail) – art 16/1. This will also apply to marketing phone calls unless a Member State opts for a solution that gives consumers the right to object to the reception of voice-to-voice marketing calls – art. 16.4.

Exception to the art 16/1: **companies are allowed to contact by e-mail former clients for direct marketing purposes (art 16/2)**, if the clients are provided with the right to object.

- **All electronic communications must be confidential** (art 5) – for instance, storing emails or voice calls will not be allowed without the consent of the user;
- **Confidentiality of users' s online behaviour and devices has to be guaranteed (art 8)** – consent is required to access information on a users' s device – terminal equipment. Users also need to agree to website cookies or other technologies to access information stored on their computers or to track their online behaviour (art.8/1 + 8/1/b). Nevertheless, no consent is needed for non-privacy intrusive cookies improving internet experience – art 8/1/a, c + recital 21 (e.g. cookies needed to remember shopping chart history – such as shopping baskets, for filling in online forms or for login information for the same session do not require consent). Cookies set by a visited website counting the number of visits to that website will no longer require consent neither (art 8/1/d). But web tracking in general terms needs consent.
- **Processing of communications content on metadata is conditioned to consent (art. 6/2)** – Metadata (e.g. information on who was called, timing, duration of the call) has a high privacy component and need to be deleted or made anonymous if users did not give their consent;
- **Presentation and restriction of calling and connected identification (art 12)** – as regards calling online identification it is necessary to protect the right of the calling party to suppress the presentation of the identification of the line from which the call is being made and the right of the called party to reject calls from unidentified lines.

- Remedies, Liability, penalties – remedies liabilities and fines follow the General Data Protection Regulation (arts. 21+22+23).

How does the Regulation affect the hospitality sector?

- **Direct marketing**

- Communication done by companies to former clients by e-mail can be done without consent (art 16/2);
- Communication done by email to potential customers who are not former clients' needs to be done with consent (art 16/1);

HOTREC fully agrees with these provisions which are completely in line with the General Data Protection Regulation ([Regulation 2016/279](#)) - recital 47 + art.6/1/f.

- **Cookies**

- Very positive that for instance shopping baskets are allowed without clients consent. Web tracking needs consent (which is considered by HOTREC fair).

- **Phone calls**

- Art 12 does not apply directly to the hospitality sector. For external phone calls, it will be the external provider who will need to comply with the legislation. For internal calls (internal calls done within hotel system), the hotel does not need to comply with these rules, as the system is not publicly available.

Next steps

- File to be decided under the ordinary legislative procedure (agreement between European Parliament + Council);
- EP presented its [report](#) on 21 June 2017. Rapporteur (MEP Lauristin (Estonia/S&D)).
For information: Amendment 11 of the report mentions that wi-fi access points (such as hotels and restaurants) should protect the confidentiality of the communication done by the user (HOTREC considers this point fair).
Deadline for amendments: 10 July 2017, 12:00 pm
- Council to continue discussions at working group level.

HOTREC position

HOTREC was in contact with the European Commission and considers that the proposal is fair and that goes in line with the General Data Protection Regulation.

HOTREC will follow the negotiations, to make sure that the legislation remains fair for the hospitality businesses.

If HOTREC members have any particular problems with the legislation ([EP report](#)), please let HOTREC secretariat know by 6th July 2017.
