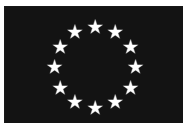


EUROPEAN PARLIAMENT

1999



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

3 July 2001

PE 302.241/18- 99

AMENDMENTS 18-99

DRAFT REPORT by **Marco Cappato** (PE 302.241)
ON THE PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL
DIRECTIVE CONCERNING THE PROCESSING OF PERSONAL DATA AND THE
PROTECTION OF PRIVACY IN THE ELECTRONIC COMMUNICATIONS SECTOR

Proposal for a directive COM(2000) 385 – C5-0439/2000 – 2000/0189(COD)

Text proposed by the Commission

Amendments

Amendment 18, by Elena Ornella Paciotti
Recital 5 a (new)

5.a. Information that is part of a broadcasting service provided over a public communications network is intended for a potentially unlimited audience and does not constitute a communication in the sense of this Directive. However in cases where the individual subscriber or user receiving such information can be identified, for example with video-on-demand services, the information conveyed is covered within the meaning of a communication for the purposes of this Directive.

Justification

Or. en

Amendment 19, by Elena Ornella Paciotti
Recital 10

(10) 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. **It is for Member States to take such measures as are 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. **This Directive does not affect the ability of Member States to carry out** lawful interception of electronic communications if necessary for any of these purposes.

(10) Like Directive 95/46/EC, this Directive **addresses** issues of protection of fundamental rights and freedoms related to activities which are not governed by Community law. **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 and the measures have to be proportionate, necessary and of limited duration in a democratic society. Exploratory or general electronic surveillance on a large scale are proscribed.**

Justification

Legislative measures taken by the Member States which restrict the scope of the Directive must be not only necessary but also proportionate and of limited duration.

Or. it

Amendment 20, by Elena Ornella Paciotti
Recital 13

(13) Service providers should take appropriate measures to safeguard the

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security of their services, if necessary in conjunction with the provider of the network, and inform subscribers of any special risks of a breach of the security of the network. Such risks may especially occur for electronic communications services over an open network such as the Internet. It is particularly important for subscribers and users of such services to be fully informed by their service provider of the existing security risks which are outside the scope of possible remedies by the service provider. Service providers who offer publicly available electronic communications services over the Internet should inform users and subscribers of measures they can take to protect the security of their communications for instance by using specific types of software or encryption technologies. Security is appraised in the light of Article 17 of Directive 95/46/EC.

security of their services, if necessary in conjunction with the provider of the network, and inform subscribers of any special risks of a breach of the security of the network. Such risks may especially occur for electronic communications services over an open network such as the Internet. It is particularly important for subscribers and users of such services to be fully informed by their service provider of the existing security risks which are outside the scope of possible remedies by the service provider. Service providers who offer publicly available electronic communications services over the Internet should inform users and subscribers of measures they can take to protect the security of their communications for instance by using specific types of software or encryption technologies. Security is appraised in the light of Article 17 of Directive 95/46/EC.

The requirement to inform subscribers of particular security risks does not discharge a service provider from the obligation to take, at his own costs, appropriate and immediate measures to remedy any new, unforeseen security risks and restore the normal security level of the service. The provision of information about security risks to the subscriber should be free of charge except for any nominal costs which the subscriber may incur while receiving or collecting the information, for instance by downloading an electronic mail message.

Justification

Or. en

Amendment 21, by Elena Ornella Paciotti
Recital 15

(15) The data relating to subscribers processed within electronic communications networks to establish connections and to transmit information contain information on the private life of natural persons who have a right to respect for their correspondence. The legitimate interests of legal persons should also be protected. Such data may only be stored to the extent that is necessary for the provision of the service for the purpose of billing and for interconnection payments, and for a limited time. Any further processing of such data which the provider of the publicly available electronic communications services may want to perform for the marketing of its own electronic communications services or for the provision of value added services, may only be allowed if the subscriber has agreed to this on the basis of accurate and full information given by the provider of the publicly available electronic communications services about the types of further processing it intends to perform and about the subscriber's right not to give or to withdraw his consent to such processing. Traffic data used for marketing of own communications services or for the provision of value added services should also be erased or made anonymous after the provision of the service. Service providers should always keep subscribers informed of the types of data they are processing and the purposes and duration for which this is done.

(15) The data relating to subscribers processed within electronic communications networks to establish connections and to transmit information contain information on the private life of natural persons who have a right to respect for their correspondence. The legitimate interests of legal persons should also be protected. Such data may only be stored to the extent that is necessary for the provision of the service for the purpose of billing and for interconnection payments, and for a limited time. Any further processing of such data which the provider of the publicly available electronic communications services may want to perform for the marketing of its own electronic communications services or for the provision of value added services, may only be allowed if the subscriber has agreed to this on the basis of accurate and full information given by the provider of the publicly available electronic communications services about the types of further processing it intends to perform and about the subscriber's right not to give or to withdraw his consent to such processing. Traffic data used for marketing of own communications services or for the provision of value added services should also be erased or made anonymous after the provision of the service. Service providers should always keep subscribers informed of the types of data they are processing and the purposes and duration for which this is done.

Value added services may for instance consist of advice on least expensive tariff packages, route guidance, traffic information, weather forecasts and tourist information.

Amendment 22, by Ana Palacio Vallelersundi
Recital 15

The data relating to subscribers processed within electronic communications networks to establish connections and to transmit information contain information on the private life of natural persons who have a right to respect for their correspondence. The legitimate interests of legal persons should also be protected. Such data may only be stored to the extent that is necessary for the provision of the service for the purpose of billing and for interconnection payments, and for a limited time. Any further processing of such data which the provider of the publicly available electronic communications services may want to perform for the marketing of *its own* electronic communications services or for the provision of value added services, may only be allowed if the subscriber has agreed to this on the basis of accurate and full information given by the provider of the publicly available electronic communications services about the types of further processing it intends to perform and about the subscriber's right not to give or to withdraw his consent to such processing. Traffic data used for marketing of *own* communications services or for the provision of value added services should also be erased or made anonymous after the provision of the service. Service providers should always keep subscribers informed of the types of data they are processing and the purposes and duration for which this is done.

The data relating to subscribers processed within electronic communications networks to establish connections and to transmit information contain information on the private life of natural persons who have a right to respect for their correspondence. The legitimate interests of legal persons should also be protected. Such data may only be stored to the extent that is necessary for the provision of the service for the purpose of billing and for interconnection payments, and for a limited time. Any further processing of such data which the provider of the publicly available electronic communications services may want to perform for the marketing of electronic communications services or for the provision of value added services, may only be allowed if the subscriber has agreed to this on the basis of accurate and full information given by the provider of the publicly available electronic communications services about the types of further processing it intends to perform and about the subscriber's right not to give or to withdraw his consent to such processing. ***Furthermore, this consent should be considered given on line by a simple click, provided that the subscriber is clearly informed at this moment.*** Traffic data used for marketing of communications services or for the provision of value added services should also be erased or made anonymous after the provision of the service. Service providers should always keep subscribers informed of the types of data they are processing and the purposes and duration for which this is done.

Justification

In practice, there are different ways to obtain consent. So, it is important to remit to other existing Directives in which this term is defined. Furthermore, given the advance digital technologies currently being introduced in public communication networks it should be necessary to contemplate other legitimate forms of given consent.

Or. en

Amendment 23, by Elena Ornella Paciotti
Recital 15. a (new)

15.a. For the purposes of this Directive consent of a user or subscriber, regardless of whether the latter is a natural or a legal person, should have the same meaning as the data subject's consent as defined and otherwise determined within Directive 95/46/EC.

Justification

Or. en

Amendment 24, by Elena Ornella Paciotti
Recital 15 b (new)

15.b. The prohibition of storage of communications and the related traffic data by others than the users or without their consent is not intended to prohibit any automatic, intermediate and transient storage of this information in so far as this takes place for the sole purpose of carrying out the transmission in the electronic communications network and provided that the information is not stored for any period longer than is necessary for the transmission and for traffic management purposes, and that during

the period of storage the confidentiality remains guaranteed. Where this is necessary for making more efficient the onward transmission of any publicly accessible information to other recipients of the service upon their request, this Directive should not prevent that such information may be further stored, provided that this information would in any case be accessible to the public without restriction and that any data referring to the individual subscribers or users requesting such information are erased.

Justification

Or. en

Amendment 25, by Elena Ornella Paciotti
Recital 15. c (new)

15.c. Confidentiality of communications should also be ensured in the course of lawful business practice. Where necessary and legally authorised, communications can be recorded for the purpose of providing evidence of a commercial transaction. Directive 95/46/EC applies to such processing. Parties to the communications should to be informed prior to the recording about the recording, its purpose and the duration of its storage. The recorded communication should be erased as soon as possible and in any case at the latest by the end of the period during which the transaction can be lawfully challenged.

Justification

Or. en

Amendment 26, by Elena Ornella Paciotti
Recital 17.a (new)

17.a. Whether the consent to be obtained for the processing of personal data in view of providing a particular value added service must be that of the user or of the subscriber will depend on the data to be processed and on the type of service to be provided and on whether it is technically, procedurally and contractually possible to distinguish the individual using an electronic communications service from the legal or natural person having subscribed to it.

Justification

Or. en

Amendment 27, by Elena Ornella Paciotti
Recital 18.a (new)

18.a. Where the provider of an electronic communications service or of a value added service subcontracts the processing of personal data necessary for the provision of these services to another entity, this subcontracting and subsequent data processing must be in full compliance with the requirements regarding controllers and processors of personal data as set out in Directive 95/46/EC.

Justification

Or. en

Amendment 28, by Elena Ornella Paciotti
Recital 18.b (new)

18.b. Where the provision of a value added service requires that traffic or location data are forwarded from an electronic communications service provider to a provider of value added services, the subscribers or users to whom the data are related should also be fully informed of this forwarding before giving their consent for the processing of the data.

Justification

Or. en

Amendment 29, by Elena Ornella Paciotti
Recital 20. a (new)

20.a. The obligation to inform subscribers of the purpose(s) of public directories in which their personal data are to be included should be imposed on the party collecting the data for such inclusion. Where the data may be transmitted to one or more third parties, the subscriber should be informed of this possibility and of the recipient or the categories of possible recipients. Any transmission should be subject to the condition that the data may not be used for other purposes than those for which they were collected. If the party collecting the data from the subscriber or any third party to whom the data have been transmitted wishes to use the data for an additional purpose, the renewed consent of the subscriber must be obtained either by the initial party collecting the data or by the third party to whom the data have been transmitted

Justification

Or. en

Amendment 30, by Graham R. Watson
Recital 21

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 are natural persons.

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 are natural persons. ***The proposal to include unsolicited commercial electronic communications in the scope of article 13.1 is essential in order to deal with the specificities of electronic messaging. The costs and “nuisance factor” involved in unsolicited commercial electronic messages, particularly on mobile devices, is substantially greater than offline postal mail. The proposal of a ban on unsolicited commercial electronic communications should not, therefore, infer any alteration to provisions of Community law relating to offline commercial communications***

Justification

Self explanatory

Or. en

Amendment 31, by Astrid Thors
Recital 21

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 should be provided for subscribers against intrusion of their privacy by means of unsolicited calls, telefaxes, electronic mails and other forms of ***unsolicited electronic mass communications. As a result of the***

safeguards to subscribers who are natural persons.

demarcation between the Directive on electronic commerce and this Directive, the provisions of this Directive do not apply to legal persons or to commercial relations.

Justification

There are no objective grounds for asserting that the limits may apply only to communications for marketing purposes. Moreover, it is appropriate to seek a technology-neutral description which is oriented towards the future. There is also an obvious need for demarcation between this directive and the e-commerce directive.

Or. sv

Amendment 32, by Ilka Schröder
Recital 21

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 are natural persons.

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 are natural persons **and to non-profit organisations.**

Justification

Unsolicited commercial communications may be considered as normal and acceptable practice in the business world. Not all legal persons are business users however.

Or. en

Amendment 33, by Michael Cashman
Recital 21.a (new)

(a) Spamming – the bulk sending of untargeted unsolicited emails – is already covered by special protection measures, in particular by Article 7(1) of Directive 2000/31/EC, by Articles 6 and 7 of the general data protection Directive 95/46/EC,

by Directive 84/450/EEC on misleading advertising and by Directive 93/13/EC on unfair terms in consumer contracts.

Justification

Existing, current legislation can be used to combat spam and, therefore, there exists no need for a new, rigid and cost-increasing legislation that most likely will not have an effect on spam.

Or. en

Amendment 34, by Astrid Thors
Recital 21 b (new)

(b) Unsolicited other electronic communications include:

- messages which are intended to endanger the functioning of the network,***
- automatic bulk mail,***
- messages whose senders are not known to their recipients.***

It is difficult to categorise communications on the basis of their content, even though unsolicited electronic communications often infringe other directives and provisions on consumer protection and citizens' rights.

Justification

The directive includes provisions on spamming, but no attempt has been made to define it. It is important to stipulate that the content of communications does not determine whether or not measures are needed, but attention should also be drawn, as the Commission does in its communication on network and information security, to the fact that there are particularly harmful forms of bulk mailing.

Or. sv

Amendment 35, by Astrid Thors
Recital 21 c (new)

Member States' possibilities for taking legal action on their own in respect of unsolicited electronic communications are limited and imply international cooperation. It also makes a big difference whether the sender has used a static or a dynamic address. A system which prohibits the sending of messages without the recipients' consent (opt-in) is not effective on its own. The sector concerned should be encouraged to draw up common rules, if necessary having the same status as that provided for in Article 27 of Directive 95/46.

Justification

The main aim of the fight against unsolicited communications is that service providers should develop filter programs. Unfortunately, there are many examples showing that recipients in countries with opt-in systems receive large quantities of spam in spite of the rules. It is therefore more important, with regard to individual members of the public and consumers, that service providers have a strong interest in improving their service. If need be, models and good practice guidelines could be drawn up within the remit of the Article 29 Working Party.

Or. sv

Amendment 36, by Maria Berger Article 2 (b)

(b) 'traffic data' means **any** data **processed in the course of or for the purpose of** the transmission of a communication over an electronic communications network;

(b) 'traffic data' means data **which it is essential to process for** the transmission of a communication over an electronic communications network **and for communication billing**;

Justification

Traffic data contain significant and sensitive use-related information. There is a fundamental requirement, then, that, once a connection has been established, data must immediately be erased. This amendment is linked with Article 6(1)(a).

Strict criteria under Directive 95/46/EC (general data protection Directive) govern the permissibility of the further use of such data by way of derogation: processing must be essential for the service to be performed. Processing extending beyond what is needed for performance of the contract (e.g. for marketing purposes) must be separately authorised by the user concerned.

To ensure the requisite legal certainty, it is essential that the term 'traffic data' be defined once and for all. There must be a strict distinction between the scale of traffic data essential for contract performance and the data category used for building customer profiles.

Proposed solution: in the Directive currently in force, an exhaustive annex sets out the traffic data which may be processed for the purposes of contract performance and billing. This should be brought into line with the new scope of the Directive and taken over.

Or. de

Amendment 37, by Marco Cappato
Article 2. b)

(b) 'traffic data' means any data processed ***in the course of or*** for the purpose of the ***transmission*** of a communication ***over*** an electronic communications network;

(b) 'traffic data' means any ***personal*** data processed for the purpose of the ***conveyance*** of a communication ***on*** an electronic communications network ***or for the billing thereof***;

Justification

compromise between the Council text and the Cappato report former amendment on the article;

Or. en

Amendment 38, by Marco Cappato
Article 2. c)

(c) 'location data' means any data processed in an electronic communications network, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service;

(c) 'location data' means any ***personal*** data processed in an electronic communications network, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service;

Justification

compromise between the Council text and the Cappato report former amendment on the article

Or. en

Amendment 39, by Maria Berger
Article 2 (c)

- (c) ***‘location data’ means any data processed in an electronic communications network, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service;***
- (c) ***Delete***

Justification

Location data are traffic data for which there is no objective reason for special treatment. The processing of such data, too, presupposes that it has been established that the service can only be performed or billed with the help of such data and that the user has expressly consented to the use of the data for other purposes.

Or. de

Amendment 40, by Marco Cappato
Article 2 d)

- (d) ***‘communication’ means any information exchanged or transmitted between a finite number of parties by means of a publicly available electronic communications service;***
- (d) ***‘communication’ means any exchange or conveyance of information between a finite number of parties by means of a publicly available electronic communications service.***
This does not include any information conveyed as part of a broadcasting service to the public over an electronic communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information

Justification

compromise between the Council text and Cappato report amendment on the article

Or. en

Amendment 41, by Elena Ornella Paciotti
Article 2 d)

(d) 'communication' means any information exchanged or transmitted between a finite number of parties by means of a publicly available electronic communications service;

(d) 'communication' means any information exchanged or ***conveyed*** between a finite number of parties by means of a publicly available electronic communications service. ***This does not include any information conveyed as part of a broadcasting service to the public over an electronic communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information***

Justification

Or. en/it

Amendment 42, by Elena Ornella Paciotti
Article 2. f), g), h) (new)

- f) ***"consent" by a user or subscriber corresponds to the data subject's consent in Directive 95/46/EC.***
- g) ***"value added service" means any service which requires the processing of traffic data or location data other than traffic data beyond what is necessary for the transmission of a communication or the billing thereof.***

(h) *"electronic mail" means any text, voice, sound or image message sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient.*

Justification

Or. en

Amendment 43, by Marco Cappato
Article 4.2

2. In case of a particular risk of a breach of the security of the network, the ***provider*** of a publicly available electronic communications service ***must inform the subscribers concerning such risk and any possible remedies***, including the *costs* involved.

2. In case of a particular risk of a breach of the security of the network, the provider of a publicly available electronic communications service must inform the subscribers concerning such risk and, ***where the risk is outside the scope of the measures to be taken by the service provider***, of any possible remedies, including ***an indication*** of the *likely* costs involved.

Justification

Council text

Or. en

Amendment 44, by Elena Ornella Paciotti
Article 4.2

2. In case of a particular risk of a breach of the security of the network, the provider of a publicly available electronic communications service must inform the subscribers concerning such risk and any possible remedies, including the costs involved.

2. In case of a particular risk of a breach of the security of the network, the provider of a publicly available electronic communications service must inform the subscribers concerning such risk and, ***where the risk is outside the scope of the measures to be taken by the service***

provider, of any possible remedies, including **an indication of the likely** costs involved.

Justification

Or. en

Amendment 45, by Ilka Schröder
Article 4.2

2. ***In case of a particular risk of a breach of the security of the network***, the provider of a publicly available electronic communications service must inform the subscribers concerning ***such risk*** and any possible remedies, including the costs involved.

2. The provider of a publicly available electronic communications service must inform the subscribers concerning ***the various risks of a breach of the security of the network*** and any possible remedies ***or preventive measures***, including the costs involved.

Justification

Prevention of risks must be addressed as a general concern, in a way that empowers the subscriber to make his own choices.

Or. en

Amendment 46, by Elena Ornella Paciotti
Article 5.1

1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data, by persons other than users, without the consent of the users concerned, except when legally authorised to do so, in accordance with Article 15(1).

1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data, by persons other than users, without the consent of the users concerned, except when legally authorised to do so, in accordance with Article 15(1). ***This paragraph shall not prevent technical storage which is necessary for the***

conveyance of a communication without prejudice to the principle of confidentiality.

Justification

Or. en

Amendment 47, by Maria Berger
Article 5(1)

1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data, by persons other than users, without the consent of the users concerned, except when legally authorised to do so, in accordance with Article 15(1).

1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data, by persons other than users, without the consent of the users concerned, except when legally authorised to do so, in accordance with Article 15(1).

Violation of privacy by law enforcement authorities pursuant to Article 15 must be proportionate to the objectives of such action and, in particular, must take place only where there are aggravated incriminating circumstances on a case-by-case basis and as uninvassively as possible.

Justification

Addition: there is an uneasy relationship between data protection guarantees and authorities' interest in clearing up crimes efficiently. The most benign surveillance instruments must therefore be chosen which ensure maximum safeguarding of users' privacy.

Or. de

Amendment 48, by Elena Ornella Paciotti
Article 5.2

2. Paragraph 1 shall not affect any legally authorised recording of communications and the related traffic data in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication.

2. Paragraph 1 shall not affect any legally authorised recording of communications and the related traffic data ***when carried out*** in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication

Justification

Or. en

Amendment 49, by Maria Berger
Article 5.3 (new)

3. Member States shall ensure that providers of electronic communications networks or services do not, in accessing terminal equipment, ascertain or store any personal information without the prior express consent of the user or subscriber. In addition, consent shall be deemed to have been effectively given only if the user, when he is informed about his rights concerning consent, is also informed about the type of data, purpose, possible recipients and his right to withdraw consent at any time. The only exception to this shall be short-term technical intermediate storage in order to simplify data transmission.

Justification

User privacy deserving utmost protection includes: information stored on a PC's hard disk. Cookies and other special software products for invisible tapping of hard disk contents permit user and utilisation profiles to be generated without the user even realising that it is happening. At all events the use of such data mining tools should be prohibited without the express consent of the user, who must have been given comprehensive information as to his rights.

Or. de

Amendment 50, by Maria Berger
Article 6.1

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 anonymous upon completion of the transmission, without prejudice to the provisions of paragraphs 2, 3 and 4.1.-***

1. Traffic data relating to subscribers and users ***may be stored only in so far as this is technically essential for performance of the service. The data shall be immediately erased or irreversibly made anonymous upon completion of the transmission.***

Justification

In an annex, Directive 95/46/EC definitively defines 'traffic data' as data needed for the establishment of a connection and for billing, including call number, address, and start and duration of connection.

Or. de

Amendment 51, by Maria Berger
Article 6.1(a) (new)

1.(a) List of data
For the purpose referred to in Article 6, the following data may be used pursuant to paragraphs 1, 2 and 3:
- number or identification of the terminal equipment
- the user's address and the type of terminal equipment
- number of units to be charged for accounting period
- number of the recipient's station
- type, starting time and duration of communications service
- other information concerning payments such as advance payment by instalments, reminders, disconnection.

Justification

The broad definition in the proposal for a Directive - any data processed in the course of or for the purpose of the transmission of the communication over an electronic communications network - would also extend to e-mail addresses, log files, mail headers, provider assignment

details, browsers, operating systems and location for mobile connections for special located services, etc.

Or. de

Amendment 52, by Maria Berger
Article 6.2

2. Traffic data ***which are necessary for the purposes of subscriber billing and interconnection payments may be processed. Such processing*** is permissible only up to the end of the period during which the bill may lawfully be challenged or payment pursued.

2. Traffic data ***the storage of which is essential for subscriber billing shall be exempt from this. The processing thereof*** is permissible only up to the end of the period during which the bill may lawfully be challenged or payment pursued.

Justification

In view of the commercial value of these address elements for data mining, commercial communications and e-commerce, users have a particularly pronounced need for safeguards against a lack of transparency or against pressure to give consent.

Consent must be given expressly and after the user has been adequately informed of his rights (otherwise consent will not be genuine if terms and conditions are simply given in the 'small print' or on hard-to-access Internet pages).

The disclosure of data to third parties must be expressly prohibited.

Value added services provide data linked to content extending far beyond conventional connection data. That increases the need for user safeguards:

1. The term 'value added services' is not defined.

2. The term is likely to include existing value-added telephone or Internet services. This vague wording is presumably intended to extend to all conceivable service categories, however, yet to be developed within the WWW/WAP/UMTS infrastructure.

3. Because the scope of a declaration of consent to data disclosure in connection with value added services is not clear to the user and the communications content can be traced back, exemptions from the general requirement to erase such data must be subject to particularly strict conditions.

4. At present, paragraph 3 - in so far as value added services are referred to - flatly contradicts

the basic objective of the directive, which is to protect user data and privacy. If this is broadly interpreted, operators would be allowed to disclose customers' traffic data to a virtually unrestricted and so vaguely defined group of recipients such as any providers of 'value added services'. See amendment to Article 2(b).

Or. de

Amendment 53, by Marco Cappato
Article 6.3

3. For the purpose of marketing *its own* electronic communications services or for the provision of value added services *to the subscriber*, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services, if the subscriber has given his consent.

3. For the purpose of marketing electronic communications services or for the provision of value added services, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services *or marketing*, if the subscriber *or user to whom the data relate* has given his consent.

Justification

Council text (that already includes Cappato report amendment on the paragraph), except the last Council sentence on the possibility to withdraw consent; this right is already guaranteed by article 14 of the directive 95/46/CE on the data subject's right to object.

Or. en

Amendment 54, by Elena Ornella Paciotti
Article 6.3

3. For the purpose of marketing its own electronic communications services or for the provision of value added services to the subscriber, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services, if the subscriber has given his consent.

3. For the purpose of marketing electronic communications services or for the provision of value added services, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services *or marketing*, if the subscriber *or user to whom the data relate* has given his consent. *Users or subscribers shall be given the possibility to withdraw their*

consent for the processing of traffic data at any time.

Justification

Or. en

Amendment 55, by Maria Berger
Article 6.3

3. For the purpose of marketing its own electronic communications services or for the provision of value added services to the subscriber, the provider of a publicly available electronic communications service may *process* the data referred to in paragraph 1 *to the extent and for the duration necessary for such services, if the subscriber has given his consent.*

3. For the purpose of marketing its own electronic communications services or for the provision of value added services to the subscriber, the provider of a publicly available electronic communications service may *store* the data referred to in paragraph 1 *if the subscriber has given his express consent in advance. In addition, consent shall be deemed to have been effectively given only if the attention of the subscriber, when he is asked for his consent, is clearly drawn to the types of data, the purpose of the processing, the duration of storage and the right to withdraw consent at any time.*

Justification

see justification of amendment 52

Or. de

Amendment 56, by Ilka Schröder
Article 6. 3

3. For the purpose of marketing its own electronic communications services or

3. For the purpose of marketing its own electronic communications services or

for the provision of value added services to the subscriber, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services, if the subscriber has given his consent.

for the provision of value added services to the subscriber, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services, if the subscriber has given his ***previous and explicit*** consent ***based on the information provided to him under the provisions of paragraph 4.***

Justification

The user's consent must be given in full awareness of its implications.

Or. en

Amendment 57, by Marco Cappato
Article 6.4

4. The service provider must inform the subscriber of the types of traffic data which are processed for the purposes mentioned in paragraphs 2 and 3 and of the duration of such processing.

4. The service provider must inform the subscriber ***or user*** of the types of traffic data which are processed and of the duration of such processing for the purposes mentioned in paragraph 2 and, ***prior to obtaining consent***, for the purposes in paragraph 3.

Justification

Council text

Or. en

Amendment 58, by Maria Berger
Article 6.4

4. The service provider must inform the subscriber of the types of traffic data which are processed for the purposes mentioned in paragraphs 2 and 3 and of the duration of such processing.

4. Providers of a publicly available electronic communications service may use, for their own marketing purposes, traffic data allowing the content of the service used to be traced back (value added services) only if:

- the subscriber or user has expressly given prior consent to the use;

- the declaration of consent relates to a single, precisely identified service;

- the subscriber or user has been given adequate information in advance about the types of data, the purpose of use, the duration of storage and the right to withdraw consent at any time;

- and this is not outweighed by the interest in keeping the data confidential (e.g. third-party data may not be affected).

Justification

see justification of amendment 52

Or. de

Amendment 59, by Elena Ornella Paciotti
Article 6.4

4. The service provider must inform the subscriber of the types of traffic data which are processed for the purposes mentioned in paragraphs 2 and 3 and of the duration of such processing.

4. The service provider must inform the subscriber or user of the types of traffic data which are processed and of the duration of such processing for the purposes mentioned in paragraph 2 and, **prior to obtaining consent**, for the purposes in paragraph 3.4. The service provider must inform the subscriber or user of the types of traffic data which are processed and of the duration of such processing for the purposes mentioned in paragraph 2 and, **prior to obtaining consent**, for the purposes in paragraph 3.

Justification

Or. en

Amendment 60, by Ana Palacio Vallelersundi
Article 6.4

4. The service provider must inform the subscriber of the types of traffic data which are processed for the purposes mentioned in paragraphs 2 and 3 and of the duration of such processing.

4. The service provider must inform, **subject to prior request by** the subscriber, the types of traffic data which are processed for the purposes mentioned in paragraphs 2 and 3 and of the duration of such processing.

Justification

Article 6.4 might impose some excessive requirements. Thus, the provider of the service would be required to inform the subscriber each and every time it changes the processing of such data. This obligation would be very onerous for the service provider, and might even cause a negative reaction from the consumer side (it might very well receive periodic communications from its provider). So, we propose that this paragraph be deleted entirely or at least, as it is proposed in the amendment, that this obligation be restricted to those cases when a prior request by the consumer exists.

Or. en

Amendment 61, by Ana Palacio Vallelersundi
Article 6.5

5. Processing of traffic data, in accordance with paragraphs 1, 2, 3 and 4, must be restricted to persons acting under the authority of providers of the public communications networks and services handling billing or traffic management, customer enquiries, fraud detection, marketing **the provider's own** electronic communications services or providing a value added service, and must be restricted to what is necessary for the purposes of such activities.

5. Processing of traffic data, in accordance with paragraphs 1, 2, 3 and 4, must be restricted to persons acting under the authority of providers of the public communications networks and services, **such as subsidiaries, parent companies or subcontractors**, handling billing or traffic management, customer enquiries, fraud detection, marketing electronic communications services or providing a value added service, and must be restricted to what is necessary for the purposes of such activities.

Justification

The proposed Directive should clearly indicate that the restriction involving the handling of data

to those “persons acting under the provider’s authority” (Article 6.5) also includes those persons who are duly authorised by the latter and who belong either to the company, its subsidiaries or parent companies.

Or. en

Amendment 62, by Maria Berger
Article 6.5

5. Processing of traffic data, in accordance with paragraphs 1 to 4, must be restricted to persons acting under the authority of providers of the public communications networks and services handling billing or traffic management, customer enquiries, fraud detection, marketing the provider's own electronic communications services *or providing a value added service*, and must be restricted to what is necessary for the purposes of such activities.

5. Processing of traffic data, in accordance with paragraphs 1 to 4, must be restricted to persons acting under the authority of providers of the public communications networks and services handling billing or traffic management, customer enquiries, fraud detection, marketing the provider's own electronic communications services, and must be restricted to what is necessary for the purposes of such activities. ***The disclosure to third parties of personal traffic data in accordance with paragraphs 3 and 4 shall not be permitted. Data transfer operations essential for service provision or coming under Article 15 shall be exempt from this.***

Justification

See justification of amendment 52.

Or. de

Amendment 63, by Ilka Schröder
Article 6.5

5. Processing of traffic data, in accordance with paragraphs 1 to 4, must be restricted to persons acting under the authority of providers of the public communications networks and services handling billing or traffic management,

5. ***Collection, storage and*** processing of traffic data, in accordance with paragraphs 1 to 4, must be restricted to persons acting under the authority of providers of the public communications networks and services handling billing or

customer enquiries, fraud detection, marketing the provider's own electronic communications services or providing a value added service, and must be restricted to what is necessary for the purposes of such activities.

traffic management, customer enquiries, fraud detection, marketing the provider's own electronic communications services or providing a value added service, and must be restricted to what is necessary for the purposes of such activities.

Justification

More accurate definition of involved actions.

Or. en

Amendment 64, by Marco Cappato
Article 6.6

6. Paragraphs 1, 2, 3 and 5 shall apply without prejudice to the possibility for competent **authorities** to be informed of traffic data in conformity with applicable legislation with a view to settling disputes, in particular interconnection or billing disputes.

6. Paragraphs 1, 2, 3 and 5 shall apply without prejudice to the possibility for competent **bodies** to be informed of traffic data in conformity with applicable legislation with a view to settling disputes, in particular interconnection or billing disputes

Justification

Council text

Or. en

Amendment 65, by Marco Cappato
Article 9, title and paragraph1

Location data

1. Where **electronic communications networks are capable of processing** location data other than traffic data, relating to users or subscribers of their services, these data may only be processed when they are made anonymous, or with

Location data **other than traffic data**

1. Where location data other than traffic data, relating to users or subscribers of electronic communications networks or services **can be processed**, these data may only be processed when they are made anonymous, or with the consent of the

the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service.

users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data other than traffic data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service. ***Users or subscribers shall be given the possibility to withdraw their consent for the processing of location data other than traffic data at any time.***

Justification

Council text.

Or. en

Amendment 66, by Maria Berger Article 9.1

1. Where electronic communications networks are capable of processing ***location data other than*** traffic data, relating to users or subscribers of their services, these data may only be processed ***when they are made anonymous, or with the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service.***

1. Where electronic communications networks are capable of processing ***location-related*** traffic data, relating to users or subscribers of their services, these data may only be processed ***to the extent and for the duration essential for the establishment of the connection or for the provision of any other service.***

Justification

The storage and evaluation of location-related data particularly affects the privacy of mobile telephone users. It must be ensured that location-related information is used only for service provision purposes and to the extent that is essential for that purpose.

- *Paragraph 1 does not even describe the purposes for which user consent has to be obtained. Consequently, the scope for legal interpretation is unacceptably broad.*
- *Under no circumstances may location data be released for marketing purposes. Detecting whether a client may be would go far beyond what is justifiable in terms of marketing activities (e.g. for the production of maps on the daily movement of a client from where he lives to where he works, at what location he has made on-line payments via WAP-technology etc.).*

Or. de

Amendment 67, by Elena Ornella Paciotti Article 9.1

1. Where ***electronic communications networks are capable of processing*** location data other than traffic data, relating to users or subscribers of their services, these data may only be processed when they are made anonymous, or with the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service.

1. Where location data other than traffic data, relating to users or subscribers of electronic communications networks or services ***can be processed***, these data may only be processed when they are made anonymous, or with the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data other than traffic data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service. ***Users or subscribers shall be given the possibility to withdraw their consent for the processing of location data other than traffic data at any time.***

Justification

Or. en

Amendment 68, by Ana Palacio Vallelersundi
Article 9.1

1. Where electronic communications networks are capable of processing location data other than traffic data, relating to users or subscribers of their services, these data may only be processed when they are made anonymous, or with the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service.

1. Where electronic communications networks are capable of processing location data other than traffic data, relating to users or subscribers of their services, this data may only be processed when they are made anonymous, or with the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform, **subject to prior request by** the users or subscribers, the type of location data which will be processed, the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service.

Justification

Same explanatory statement as amendment 60 to article 6 paragraph 4

Or. en

Amendment 69, by Ilka Schröder
Article 9.1

1. Where electronic communications networks are capable of processing location data other than traffic data, relating to users or subscribers of their services, these data may only be processed when they are made anonymous, or with the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service.

1. Where electronic communications networks are capable of processing location data other than traffic data, relating to users or subscribers of their services, these data may only be **collected, stored and** processed when they are made anonymous, or with the **prior and explicit** consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service **specifically asked for by the user.**

Justification

The user's consent must be given in full awareness of its implications. Additionally, a more accurate definition of involved actions is necessary to avoid ambiguous situations.

Or. en

Amendment 70, by Maria Berger
Article 9.2

2. Where consent of the users or subscribers has been obtained for the processing of location data other than traffic data, the user or subscriber must continue to have the possibility, using a simple means and free of charge, of temporarily refusing the processing of such data for each connection to the network or for each transmission of a communication.

2. Delete

Justification

See justification of amendment 66

Or. de

Amendment 71, by Ana Palacio Vallelersundi
Article 9, paragraph 2

2. Where consent of the users or subscribers has been obtained for the processing of location data other than traffic data, the user or subscriber must continue to have the possibility, using a simple means and free of charge, of temporarily refusing the processing of such data for each connection to the network or for each transmission of a communication.

2. Where consent of the users or subscribers has been obtained for the processing of location data other than traffic data, the user or subscriber must continue to have the possibility, using a simple means and free of charge, of temporarily refusing the processing of such data for each connection to the network or for each transmission of a communication, *as long as this is technically feasible and economically*

proportionate.

Justification

Same explanatory statement as Amendment 12 to Mr Cappato's draft report (to Article 8, paragraph 5).

Or. es/en

Amendment 72, by Maria Berger
Article 9.3

3. Processing of location data in accordance with paragraphs 1 and 2 must be restricted to persons acting under the authority of the provider of the electronic communications service or of the third party providing the value added service, and must be restricted to what is necessary for the purposes of providing the value added service.

3. Delete

Justification

see justification of amendment 66

Or. de

Amendment 73, by Ana Palacio Vallelersundi
Article 9.3

3. Processing of location data in accordance with paragraphs 1 and 2 must be restricted to persons acting under the authority of the provider of the electronic communications service or of the third party providing the value added service, and must be restricted to what is necessary for the purposes of providing the value added service.

3. Processing of location data in accordance with paragraphs 1 and 2 must be restricted to persons acting under the authority of the provider of the electronic communications service, **such as subsidiaries, parent companies or subcontractors**, or of the third party providing the value added service, and must be restricted to what is necessary for the purposes of providing the value added service.

Justification

In accordance with changes proposed in article 6 paragraph 5

Or. en

Amendment 74, by Elena Ornella Paciotti
Article 12.2

2. Member States shall ensure that subscribers are given the opportunity , free of charge, to determine whether their personal data are included in public directories, 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.

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.***

Justification

Or. en

Amendment 75, by Ana Palacio Vallelersundi
Article 12.2

2. Member States shall ensure that subscribers are given the opportunity, ***free of charge, to determine whether*** their personal data ***are*** included in public directories, ***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.

2 Member States shall ensure that subscribers are given the opportunity , ***to be informed in relation to*** their personal data included in public directories 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.

Justification

The consumer has to be informed of the purpose of a specific Directory (printed or electronic) (Art. 12.1). However, I do not fully share the view that all the options mentioned in paragraph 12.2 must be free of charge, since any service entails costs. It will be up to the market and the

parties involved (customers and providers), and not the regulation, to determine the relevant price, if one exists.

I propose that the existing “opt-out” regime be kept for directories, by which every subscriber would be included in the directory unless he expresses his wish not to be listed. I believe that the Commission's proposal for an opt-in system would render it practically impossible for directory publishers to fulfil the requirements of the universal service Directive to publish at least one universal directory per EU Member State. Moreover, opt-in is detrimental to the user's need to have access to the relevant information, and it is an unjustified attack on the existence of the directories industry.

Or. en

Amendment 76, by Elena Ornella Paciotti
Article 12.2.a (new)

2.a. Member States shall ensure that for any purpose of a public directory other than the search of communication details of persons on the basis of their name and, where necessary, a minimum of other identifiers, the additional consent of the subscribers is required.

Justification

Or. en

Amendment 77, by Ana Palacio Vallelersundi
Article 12.2b (new)

2.b. Personal data contained in the directories should be limited to what is necessary to identify a particular subscriber, as determined by the provider of the directory, unless the subscriber has given his unambiguous consent, in commercial terms, to the publication of additional personal data.

Justification

This amendment removes the distinction between different types of communications and provides an opt-out regime throughout the EU for all unsolicited communications. With appropriate safeguards such a regime provides sufficient consumer protection while giving legitimate commercial freedom to direct marketing operations.

Or. en

Amendment 80, by Michael Cashman Article 13.1

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) **or** facsimile machines (fax) for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent

Justification

An opt-in solution for e-mail marketing will penalise responsible marketers, but not stop illegitimate ones from continuing to send unsolicited emails. Spamming is already covered by special protection measures including Article 7 (1) of Directive 200/31/EC and Articles 6 and 7 of the general data protection Directive 95/46/EC. Stricter legal requirements will only have the effect of reducing the impetus for business to develop effective software solutions within the EU.

Or. en

Amendment 81, by Astrid Thors 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 **communication** systems without human intervention may only be allowed in respect of subscribers who have given their prior consent.

Justification

This amendment seeks to take note firstly of the fact that it is already unauthorised to harvest data in order to get addresses for untargeted bulk mailings. Thus a big part of so-called spamming is already forbidden owing to the existence of Directive 95/46. As mentioned in the recitals, it is hardly possible to foresee that e-mails can be categorised on the basis of their content, hence the omission of references to direct marketing.

Or. sv

Amendment 82, by Ana Palacio Vallelersundi
Article 13.1

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) **and** facsimile machines (fax) for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent.

Justification

The expansion of the opt-in scope to include any type of electronic communications is unnecessary and furthermore inconsistent with other Community directives.

Or. en

Amendment 83, by Ilka Schröder and Kathalijne Maria Buitenweg
Article 13.1

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 **or messaging** systems without human intervention for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior, **specific and explicit** consent.

Justification

The user's consent must be given in full awareness of its implications. The presence of examples based on existing technology in the Commission proposal may allow for a legal vacuum when new unforeseen services appear.

Or. en

Amendment 84, by Ana Palacio Vallelersundi
Article 13.1a (new)

1a. In addition, Member States shall take appropriate measures to ensure that other commercial communications by a service provider established in their territory shall be identifiable clearly and unambiguously as such, as soon as it is received by the subscriber.

Justification

The Distance Selling Directive in Article 10 establishes the opt-in system (consumer's prior consent) for faxes or automatic call systems. However, it specifies the opt-out system for other electronic communications (which includes e-mail messages). The Proposed Directive defends the opt-in system for the sake of supposed increased harmonisation among all European countries. However, it will only harm e-commerce in Europe vis-à-vis other parts of the world.

Moreover, Article 7.2 of the E-commerce Directive also establishes that the opt-out system shall apply. This will lead to great uncertainty for ISPs and a serious lack of consistency among different EU pieces of legislation.

It is understood that the objective of the European Commission is to combat so-called spamming. However, sending direct marketing via e-mail should be considered as a legitimate business activity since it involves something that is completely different from spamming. The spamming should not be considered as a direct marketing activity, since, in the majority of cases, the spammed consumer cannot identify the origin of his data.

The opt-out system will promote e-commerce in Europe, one of the major objectives of the eEurope initiative. The opt-in system will be a barrier to the same and will help encourage direct marketing companies to set up their business outside the European Union, where the legislative framework allows the opt-out for direct marketing purposes.

Or. en

Amendment 85, by Ana Palacio Vallelersundi
Article 13.1b

3. **Member States shall ensure that service providers undertaking unsolicited commercial communications by means other than those in paragraph 1 regularly consult and respect the opt-out registers in which natural persons not wishing to receive such commercial communications.**

Justification

As amendment 84

Or. en

Amendment 86, by Michael Cashman
Article 13.2

2. Member States shall **take appropriate measures to ensure that, free of charge, unsolicited communications for purposes of direct marketing, by means other than those referred to in paragraph 1, are not allowed either without the consent of the subscribers concerned or in respect of subscribers who do not wish to receive these communications, the choice between these options to be determined by national legislation**

2. Member States shall **ensure that** unsolicited communications for purposes of direct marketing, **other than those referred to in paragraph 1, may only be allowed when there is no clear objection from the consumer**

Justification

European Union legislation on e-commerce has established an opt-out regime for marketing via e-mail, through the 1995 Data Protection Directive, the 1997 Distance Selling Directive and the 2000 E-Commerce Directive Art 7 (1). A change to an opt-in regime would lack coherence and call into question the political compromise already reached in this area.

Or. en

Amendment 87, by Baroness Sarah Ludford
Article 13.2

2. Member States shall take appropriate measures to ensure that, free of charge, unsolicited communications for purposes of direct marketing, ***by means other than those referred to in paragraph 1***, are not allowed either without the consent of the subscribers concerned or in respect of subscribers who do not wish to receive these communications, the choice between these options to be determined by national legislation.

2. Member States shall take appropriate measures to ensure that, free of charge, ***all*** unsolicited communications for purposes of direct marketing, are not allowed in respect of subscribers who do not wish to receive these communications.

Justification

See justification of amendment 78

Or. en

Amendment 88, by William Francis Newton Dunn
Article 13.2

2. Member States shall take appropriate measures to ensure that, free of charge, unsolicited communications for purposes of direct marketing, ***by means other than those referred to in paragraph 1***, are not allowed ***either without the consent of the subscribers concerned or*** in respect of subscribers who do not wish to receive these communications, ***the choice between these options to be determined by national legislation***.

2. Member States shall take appropriate measures to ensure that, free of charge, ***all*** unsolicited communications for purposes of direct marketing, are not allowed in respect of subscribers who do not wish to receive these communications.

Justification

See justification of amendment 79

Or. en

Amendment 89, by Ana Palacio Vallelersundi
Article 13.2

2. Member States shall take appropriate measures to ensure that, free of charge, unsolicited communications for purposes of direct marketing, by means other than those referred to in paragraph 1, are not allowed either without the consent of the subscribers concerned or in respect of subscribers who do not wish to receive these communications, the choice between these options to be determined by national legislation.

2. Member States shall take appropriate measures to ensure that, free of charge, unsolicited communications for purposes of direct marketing, by means other than those referred to in paragraph 1, ***1a (new) and 1b (new)*** are not allowed either without the consent of the subscribers concerned or in respect of subscribers who do not wish to receive these communications, the choice between these options to be determined by national legislation.

Justification

Or. en

Amendment 90, by Astrid Thors
Article 13.2

2. Member States shall take appropriate measures to ensure that, free of charge, unsolicited communications ***for purposes of direct marketing***, by means other than those referred to in paragraph 1, are not allowed either without the consent of the subscribers

concerned or in respect of subscribers who do not wish to receive these communications, the choice between these options to be determined by national legislation.

2. ***Without prejudice to the application of article 7 of Directive 2000/31 EC***, Member States shall take appropriate measures to ensure that, ***the provisions in article 6 of the directive 95/46 are enforced and that*** free of charge, unsolicited communications, by means other than those referred to in paragraph 1, are not allowed either without the consent of the subscribers concerned or in respect of subscribers who do not wish to receive these communications, the choice between these options to be determined by national legislation.

Justification

See justification of amendment 81.

Or. en

Amendment 91, by Ana Palacio Vallelersundi
Article 13.3

3. Paragraphs 1 and 2 shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected.

3. Paragraphs 1, *1a (new)*, *1b (new)* and 2 shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected.

Justification

Or. en

Amendment 92, by Ilka Schröder
Article 13.3

3. Paragraphs 1 and 2 shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of *subscribers other than natural persons* with regard to unsolicited communications are sufficiently protected.

3. Paragraphs 1 and 2 shall apply to subscribers who are natural persons *or non-profit organisations*. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of *other subscribers* with regard to unsolicited communications are sufficiently protected.

Justification

Unsolicited commercial communications may be considered as normal and acceptable practice in the business world. Not all legal persons are business users however.

Or. en

Amendment 93, by Astrid Thors
Article 13.2a (new)

2 a. Senders of unsolicited electronic mail shall supply with their message an address to which the recipient may send a request that such communications cease. The practice of sending electronic messages disguising or concealing the identity of the sender on whose behalf the communication is made shall be prohibited.

Justification

See justification of amendment 81.

Or. en

Amendment 94, by Baroness Sarah Ludford
Article 13.3

3. ***Paragraphs 1 and 2*** shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected.

3. ***Paragraph 2*** shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected.

Justification

see justification of amendment 78

Or. en

Amendment 95, by William Francis Newton Dunn
Article 13.3

3. **Paragraphs 1 and 2** shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected.

3. **Paragraph 2** shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected.

Justification

see justification of amendment 79

Or. en

Amendment 96, by Baroness Sarah Ludford
Article 13.3a (new)

3.a. Senders of unsolicited electronic communication shall supply with their communication an address to which the recipient may send a request that such communications cease.

Justification

Paragraph 3.a provides a safeguard for consumer protection in the event where Member States have chosen an opt out system.

Or. en

Amendment 97, by Elena Ornella Paciotti
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) to (4), and Article 9 of

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) to (4), and Article 9 of

this Directive when such restriction constitutes a necessary measure 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.

this Directive when such restriction constitutes a necessary *and proportionate* measure *of limited duration* 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. ***Exploratory or general electronic surveillance on a large scale are proscribed.***

Justification

See Amendment 19.

Or. it

Amendment 98, by Astrid Thors 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) to (4), and Article 9 of this Directive when such restriction constitutes a necessary measure 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.

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) to (4), and Article 9 of this Directive when such restriction constitutes a necessary measure 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. ***Such restriction shall not, however, give Member States a general right to request whatever traffic and location data they wish without the authorities stating a specific reason as to why such information is needed.***

Justification

There is a clear need to indicate the limits on the exceptions Member States may make with a view to police functions.

Or. sv

Amendment 99, by Elena Ornella Paciotti Article 16

Article 12 shall not apply to editions of directories published before the national provisions adopted pursuant to this Directive enter into force

1. Article 12 shall not apply to editions of directories ***already produced or placed on the market in printed or off-line electronic form*** before the national provisions adopted pursuant to this Directive enter into force.

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 conformity with Article 12 of this Directive.***

3. ***Where companies have obtained communication details for electronic mail, such as addresses or numbers, from customers in the context of the purchase of a product or service, in accordance with Directive 95/46/EC, before the national provisions adopted in pursuance of this Directive enter into force, these***

communication details may continue to be used for direct marketing of other products of services by the same company, provided that customers are given the opportunity to stop free of charge such use of their communication details at the occasion of each message.

Justification

Or. en