



## Screening Chapter 10 Explanatory Meeting

# The Directive on Privacy and Electronic Communications (Directive 2002/58/EC)

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## « Disclaimer »

***Any positions expressed in this presentation are those of the author and do not necessarily represent the views of the Commission***

# History

- **Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data**
- **Directive 97/66/EC translated the same principles into specific rules for the telecoms sector**



# Why the new Directive in 2002?

- **To reflect developments in the markets and technologies for electronic communications services, such as the Internet ...**
- **...so as to provide an equal level of protection of personal data and privacy, regardless of the technology used.**
  - Recital 4 of Directive 2002/58/EC



# Scope and Definitions (Articles 1-2)

- **Relationship with general Directive 95/46/EC (definitions, basic rights and principles, Art. 29 WP etc.)**
- **Services concerned: on EU public comms networks**
- **All comms networks and services**
- **Definitions of communication, traffic data, location data and e-mail**



*“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.” (Art 2)*

- **I.e. any electronic communication for which the simultaneous participation of the sender and the recipient is not required**
- **> Not only ‘traditional’ e-mail but also SMS, MMS etc.**



# Security (Article 4)

- **Service providers to take appropriate measures to guarantee security of services, if necessary in conjunction with the network provider for network security issues**
- **Information to subscribers on risks**



# Confidentiality (Article 5)

- **Member States to ensure the confidentiality of communications and related traffic data.**
  - No tapping, storage, interception or surveillance without consent.
  - Exception: when based on Article 15 (derogations)





# Spyware and Cookies (Art 5(3))

- **Inform users of any tracking devices placed on their terminals (cookies, spyware)**
- **Inform about purposes of such devices (must be legitimate, i.e. in conformity with Directive 95/46)**
- **Offer the user a possibility to refuse**



# Use of Traffic Data (Art 6)

- **Use for service provision and billing**
- **Obligation to erase or anonymise**
- **Covers all electronic communications**
- **Permission-based use for value added services**
- **Information obligation**



# Use of Location Data (Art 9)

- **Use by permission only**
  - if also traffic data see Article 6
- **Full information required**
- **Temporary blockage facility for users**
- **Override available for emergency services**



# Public Subscriber Directories (Art 12)

- **Consent-based (“opt-in”) for subscribers**
- **Not opting in or opting out: no cost**
- **Full information required e.g. on “reverse search”**
- **National choice on separate opt-in for “reverse search”**
- **Rules apply to new subscribers only**



# Unsolicited Communications (Art 13)

- **Opt-in for fax, calling machines, “spam”**
- **Email: technology-neutral definition (covering SMS, MMS etc.)**
- **Opt-out for use of contact details of existing customers**
- **Choice opt-in/opt-out for other unsolicited direct marketing comms**
- **Prohibition to disguise identity of sender or use non-valid return address**
- **Commission communication (2004)28**



# 'Law Enforcement' Derogations (Article 15 (1))

- **Conditions for Measures by MS**
  - Specific, listed purposes
  - Necessity, appropriateness and proportionality
  - In order to safeguard
  - Legislative measures
- **Data retention**



# Data Retention Directive (I)

- **Derogating from Articles 5, 6 and 9 of the e-Privacy Directive, Directive 2006/24/EC obliges MS to ensure retention of data necessary to identify a communication's**
  - source, destination, date, time, duration, type, equipment, and when mobile, location



# Data Retention Directive (II)

- **No content**
- **Internet access, e-mail, Internet telephony, fixed and mobile telephony**
- **6 months – 2 years**
- **Transposition by 15 September 2007**
- **Possibility to postpone application to 2009 for Internet, e-mail and Internet telephony**

