

**bevh-amendments on the Regulation on Privacy and Electronic Communications | COM(2017) 10**

<b>Article 8 (1)</b>		
<b>EC proposal</b>	<b>bevh proposal</b>	<b>Justification</b>
<p>The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the end-user concerned shall be prohibited, except on the following grounds:</p> <p>a) it is necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or</p> <p>b) the end-user has given his or her consent; or</p> <p>c) it is necessary for providing an information society service requested by the end-user; or</p> <p>d) if it is necessary for web audience measuring, provided that such measurement is carried out by the provider of the information society service requested by the end-user.</p>	<p>The use of processing and storage capabilities of terminal equipment and the collection of <del>information</del> <u>personal data</u> from end-users' terminal equipment, including about its software and hardware, other than by the end-user concerned shall be prohibited, except on the following grounds:</p> <p>a) it is necessary <u>in relation to the provision for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network contractually agreed services, including information society services requested by the end-user;</u> or</p> <p>b) the end-user has given his or her consent; or</p> <p>c) <del>it is necessary for providing an information society service requested by the end-user</del> <u>pseudonymous data is used for purposes justified and the end-user has been informed about the right to object pursuant to Regulation (EU) 2016/679;</u> or</p> <p>d) if it is necessary for web audience measuring, provided that such measurement is carried out by the provider <u>or on behalf of the provider</u> of the information society service requested by the end-user.</p>	<p>To align the two legal frameworks the focus of the regulation should be the processing of personal data. The lack of this point of reference will lead to inconsistencies and conflicts between EPR and the GDPR.</p> <p>Consistency to Art. 6 (1) b) GDPR</p> <p>Consistency to Art. 6 (1) f), Rec. 29 and Art. 21 GDPR</p> <p>Consistency to Art. 28 GDPR</p>
<b>Article 8 (2)</b>		
<b>EC proposal</b>	<b>bevh proposal</b>	<b>Justification</b>
<p>The collection of information emitted</p>	<p>The collection of <u>personal data</u></p>	<p>To align the two legal frameworks the</p>

<p>by terminal equipment to enable it to connect to another device and, or to network equipment shall be prohibited, except if:</p> <p>a) ...</p> <p>b) a clear and prominent notice is displayed informing of, at least, the modalities of the collection, its purpose, the person responsible for it and the other information required under Article 13 of Regulation (EU) 2016/679 where personal data are collected, as well as any measure the end-user of the terminal equipment can take to stop or minimise the collection.</p>	<p><del>information</del> emitted by terminal equipment to enable it to connect to another device and, or to network equipment shall be prohibited, except if:</p> <p>a) ...</p> <p>b) a clear and prominent notice is displayed informing of, <del>at least,</del> the modalities of the collection and the right to object pursuant to paragraph 3. <del>its purpose, the person responsible for it and the other information required under Article 13 of Regulation (EU) 2016/679 where personal data are collected, as well as any measure the end-user of the terminal equipment can take to stop or minimise the collection.</del></p>	<p>focus of the regulation should be the processing of personal data. The lack of this point of reference will lead to inconsistencies and conflicts between EPR and the GDPR.</p> <p>Consistency to Art. 13 and Art. 21 GDPR. If personal data are processed the controller has, in any case, to inform the data subject pursuant Art. 13 and Art. 21.</p>
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## Article 8 (3) new

<p><b>EC proposal</b></p> <p>The information to be provided pursuant to point (b) of paragraph 2 may be provided in combination with standardized icons in order to give a meaningful overview of the collection in an easily visible, intelligible and clearly legible manner.</p>	<p><b>bevh proposal</b></p> <p><u>Beside Article 21 Regulation (EU) 2016/679 the data subject shall have the right to object at any time to collection which is based on Paragraph 2.</u> The information <del>to be provided pursuant to point (b) of paragraph 2</del> may be provided in combination with standardized icons. <del>in order to give a meaningful overview of the collection in an easily visible, intelligible and clearly legible manner.</del></p>	<p><b>Justification</b></p> <p>Introduction of a new specific right to object beside the rights required under Art. 21 GDPR.</p> <p>The former Paragraph 3 and 4 are shifted to new paragraphs 4 and 5 due to consequential changes.</p>
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## Article 9

<p><b>EC proposal</b></p> <ol style="list-style-type: none"> <li>The definition of and conditions for consent provided for under Articles 4(11) and 7 of Regulation (EU) 2016/679/EU shall apply.</li> <li>Without prejudice to paragraph 1, where technically possible and feasible, for the purposes of point (b) of Article 8(1), consent may be expressed by using the appropriate technical settings of a software application enabling access to the internet.</li> <li>End-users who have consented to</li> </ol>	<p><b>bevh proposal</b></p> <p>delete</p>	<p><b>Justification</b></p> <p>Article 9 should be deleted. The whole article is redundant:</p> <p>Paragraph 1 → Article 1 Paragraph 3</p> <p>Paragraph 2 → Article 1 Paragraph 3 in combination with Recital 32 GDPR</p> <p>Paragraph 3 → Article 7 Paragraph 3 GDPR</p>
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<p>the processing of electronic communications data as set out in point (c) of Article 6(2) and points (a) and (b) of Article 6(3) shall be given the possibility to withdraw their consent at any time as set forth under Article 7(3) of Regulation (EU) 2016/679 and be reminded of this possibility at periodic intervals of 6 months, as long as the processing continues.</p>		<p>The obligation to remind the data subject of its right to withdraw at periodic intervals is contrary to the main principles of consent-based processing of data. Because of the right to withdraw at any time and without precondition, there is no need to introduce such an obligation. Due to the obligation to inform about the right to withdraw pursuant to Art. 7 (3) GDPR the data subject is aware of this right.</p>
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## Article 10

<b>EC proposal</b>	<b>bevh proposal</b>	<b>Justification</b>
<ol style="list-style-type: none"> <li>1. Software placed on the market permitting electronic communications, including the retrieval and presentation of information on the internet, shall offer the option to prevent third parties from storing information on the terminal equipment of an end-user or processing information already stored on that equipment.</li> <li>2. Upon installation, the software shall inform the end-user about the privacy settings options and, to continue with the installation, require the end-user to consent to a setting.</li> <li>3. In the case of software which has already been installed on 25 May 2018, the requirements under paragraphs 1 and 2 shall be complied with at the time of the first update of the software, but no later than 25 August 2018.</li> </ol>	<ol style="list-style-type: none"> <li>1. Software placed on the market permitting electronic communications, including the retrieval and presentation of information on the internet, shall <del>offer the option to prevent third parties from storing information on the terminal equipment of an end-user or processing information already stored on that equipment. Upon</del> installation, the software shall inform the end-user about the privacy settings options upon installation. <del>and, to continue with the installation, require the end-user to consent to a setting.</del></li> <li>2. In the case of software which has already been installed on 25 May 2018, the requirements under paragraphs 1 and 2 shall be complied with at the time of the first update of the software, but no later than 25 August 2018.</li> </ol>	<p>The need for consent and even the choice of the term “consent” in combination with browser-settings will lead to a huge lack of legal certainty. By law, such consent cannot be in line with Art. 7 GDPR where a general consent approach is prohibited. It would be preferable just to confront each user upon installation with the general privacy settings.</p>