

# #CONEXT

le salon du commerce intelligent



e-Privacy, Big Data, plateformes en ligne... ce que les institutions européennes réservent dans les prochains mois aux entreprises du marketing direct



Partagez en direct vos réactions sur TWITTER avec **#conext @Sncdmulticanal**

# Présentation Sncd

Le SNCD s'appuie sur ses **200 sociétés membres** et les accompagne dans l'**innovation industrielle et technologique** qui découle de la **forte croissance des données** disponibles et des **droits et usages associés**



- **Des prestataires engagés**
  - Veille, déontologie et échange de bonnes pratiques
  - Promotion des techniques et métiers
  - Représentation institutionnelle et défense des métiers
- **Assistance et formation** : Informatique et libertés, Convention collective, RSE...
- **Un réseau** et du **networking**
- **Études** et interventions d'**experts**

# FEDERATION OF EUROPEAN DIRECT AND INTERACTIVE MARKETING



- FEDMA represents the interests of **data-driven marketers from across Europe in Brussels.**
- FEDMA is only European association to have **Code of Conduct approved by the Article 29 Working Party.**
- FEDMA operates mainly through **the participation of European DMAs and significant companies** who have an interest in influencing legislation.
- FEDMA influences **the Council for Ministers in 21 nation states** by coordinating content to each DMA to share with their national governments.
- For more information **on FEDMA membership**, please visit [www.fedma.org](http://www.fedma.org).
- Feel free to reach out to our national members:
  - **UK DMA** - legal experts, targeted conferences and trainings
  - **DDV**- best practice guide on direct marketing
  - **UFMD and SNCD in France** - representing entire range of digital players

- Overview of Brussels



- GDPR update



- Diving in the ePrivacy



# WHAT IS BRUSSELS TALKING ABOUT



- Online Platform – potential legislative proposal in March 2018 – new deal for consumer
- UCPD
- MCAD
- Digital content directive
- Public sector information consultation
- Discussion on AI, IoT, algorithm, competition...

## 2 LEGISLATIVE PROPOSALS IN SEPTEMBER 2017

### Cybersecurity Package

- Single cybersecurity market
- Reform of the EU cybersecurity agency
- Creation of a cybersecurity certification framework
- ...



### Free Flow of Data

- Free flow of non-personal data across borders
- Data availability for regulatory control
- The development of EU codes of conduct

# GDPR: WHAT IS FEDMA DOING?



## Developing guidance

FAQ

Guidance

Communication to members

## Code Review

Reviewing the FEDMA code

## Dialogue with institutions

Dialogue with the European Commission

Dialogue with Article 29 Working Party

Dialogue with DPA

**FEDMA FORMS A PAN-EUROPEAN CONSENSUS AND CONTRIBUTES TO BALANCED LEGISLATION**

# GDPR: WHAT IS HAPPENING



Guidance on consent and profiling expected in December 2017



Ongoing work on international data transfer and transparency



Article 29 working party works in parallel to the CNIL public consultation





Data  
retention?

ePrivacy  
regulation

Privacy Shield

...

GDPR

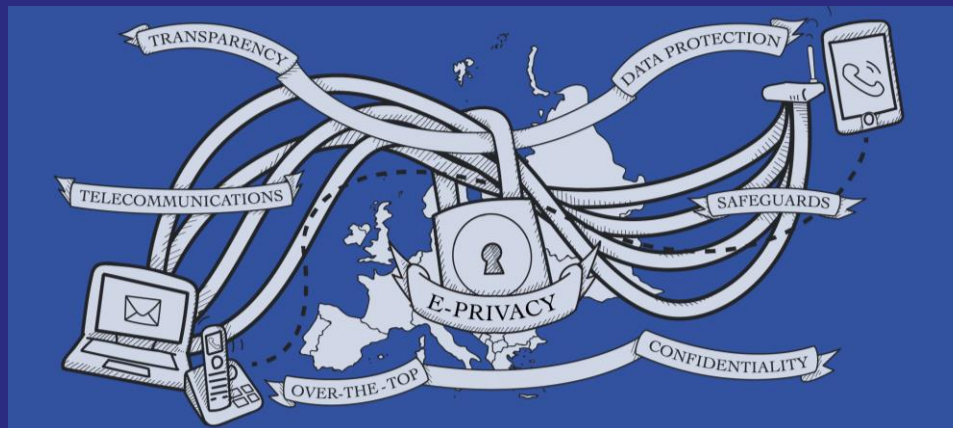
## WHY IS IT IMPORTANT?

### IN THE CURRENT DIRECTIVE

- ePrivacy – Directive 95/46 relationship
- Telemarketing
- Email marketing
- Soft opt-in
- Cookies
- Traffic and location data

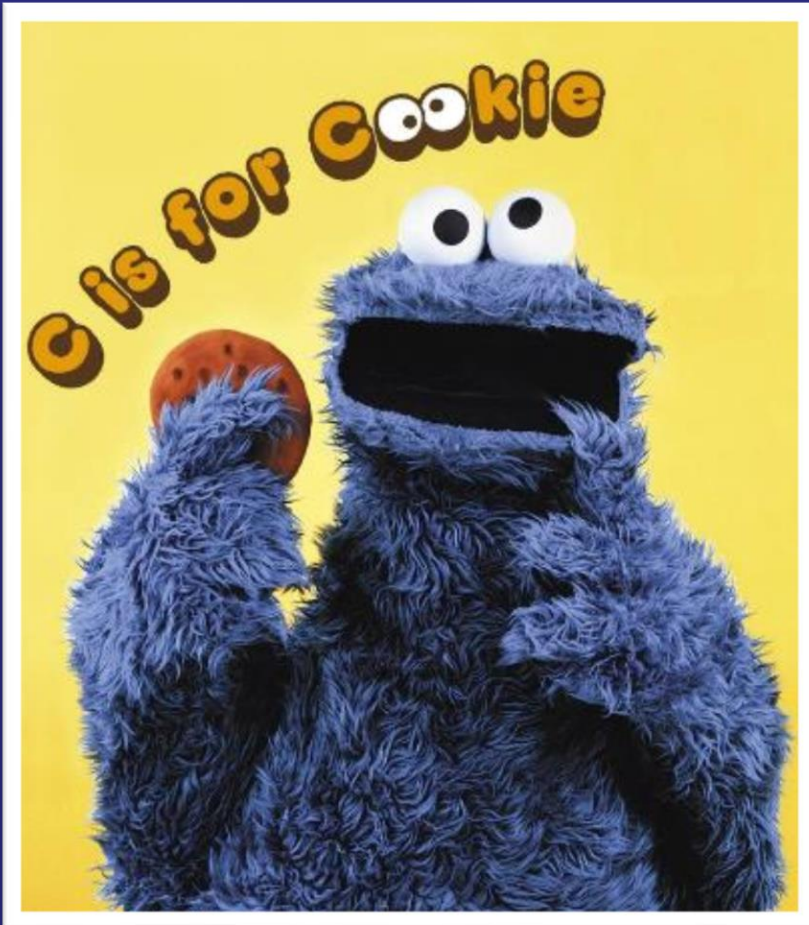
### CHALLENGES FOR THE REVIEW

- ePrivacy – GDPR relationship
- Scope of the text
- Objective of the ePrivacy Directive
- Impact on the online ecosystem
- Social media
- Tracking
- ...



## KEY POINTS:

1. Ensuring ePrivacy is compatible with the framework of GDPR by including the 6 equal basis of data processing, including Legitimate Interest.
2. Ensuring the regulation does not cover B2B.
3. Preserving Telemarketing opt-out where there is a Robinson list.



# ePRIVACY REGULATION: UNSOLICITED COMMUNICATION



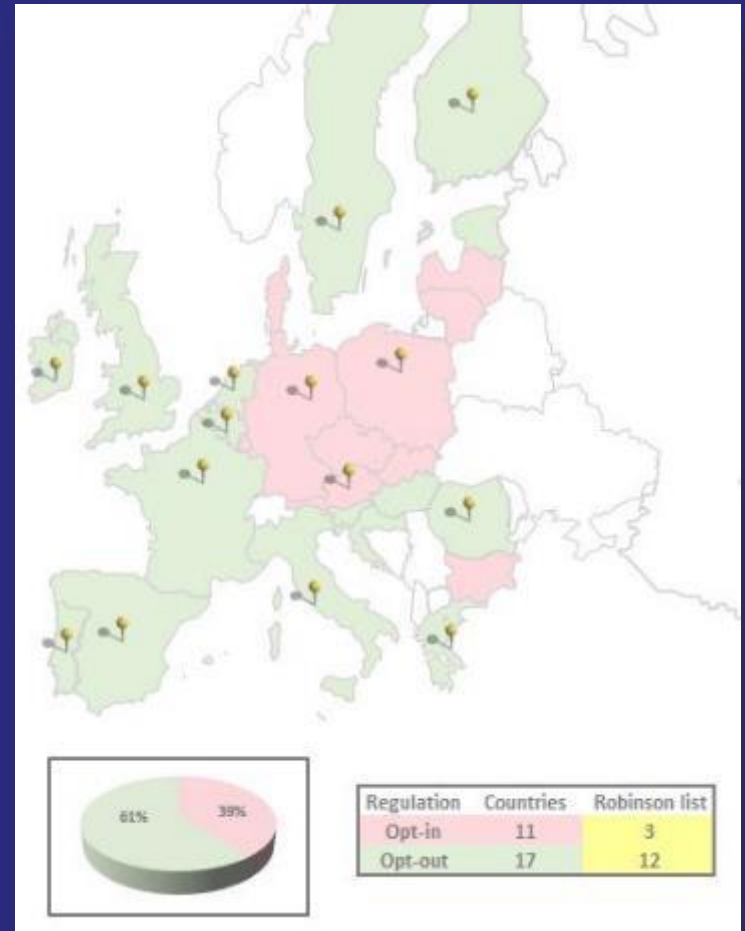
## State of play of the current Directive:



- ❑ Email marketing: opt-in + soft opt in



- ❑ Telemarketing: opt-in/opt-out depends on the country



# ePRIVACY REGULATION: UNSOLICITED COMMUNICATION



## The ePrivacy Regulation proposal: General opt-in rule



- Opt-in for email marketing: the soft opt-in exemption remains



- Opt-in for telemarketing, unless Member States decide otherwise



- Identification of the number, or
- Common prefix number

### IMPACTS :

- Broad definition of direct marketing communications
- Current telemarketing opt-out countries may move to opt-in – or have to go through a difficult process to maintain their opt-out
- Common prefix – difficult to implement
- Despite having obtain consent, calls can be blocked
- Bypassing of existing robinson list
- Incentive to legislate BtoB communications
- ...

# ePRIVACY REGULATION: PROTECTING CONFIDENTIALITY



## Confidentiality of communications: General prohibition rule



### IMPACTS:

- Broader scope
- Website messaging system
- Social media
- Comment section
- ...

### Exceptions for content data:

- **User's consent** for the provision of a specific service (provided that the purpose could not be filled using anonymous data)
- **Consent of all concerned users** to one or more specified purpose(s) (provided that the purpose could not be filled using anonymous data) and with a prior consultation of the DPA

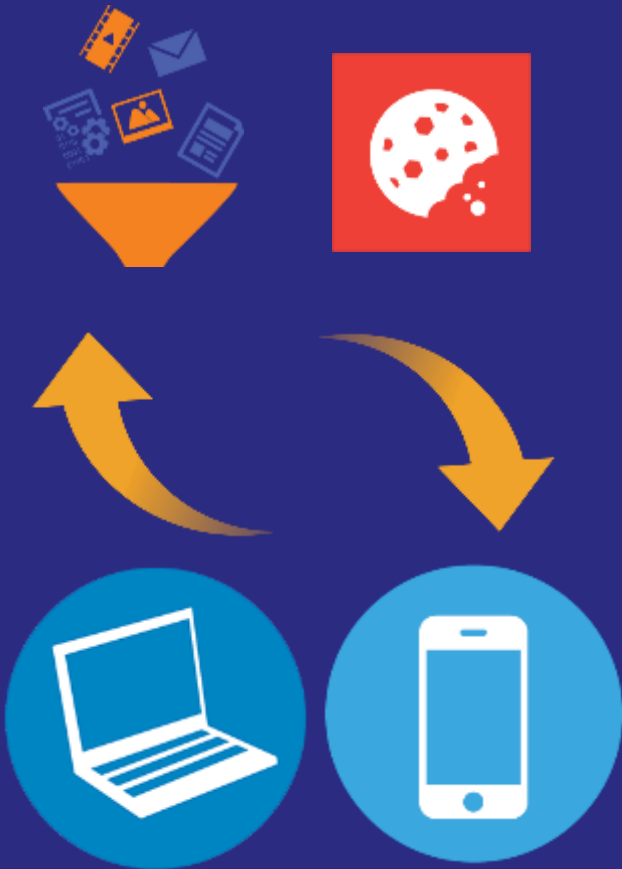
### Exceptions for Meta data:

- Necessary for the **quality of the service**
- **Billing, payments**
- Preventing fraud
- **User's consent** to one or more specified purpose(s) (provided that the purpose could not be filled using anonymous data)

# ePRIVACY REGULATION: PROTECTING CONFIDENTIALITY



## Confidentiality of the device: General prohibition rule



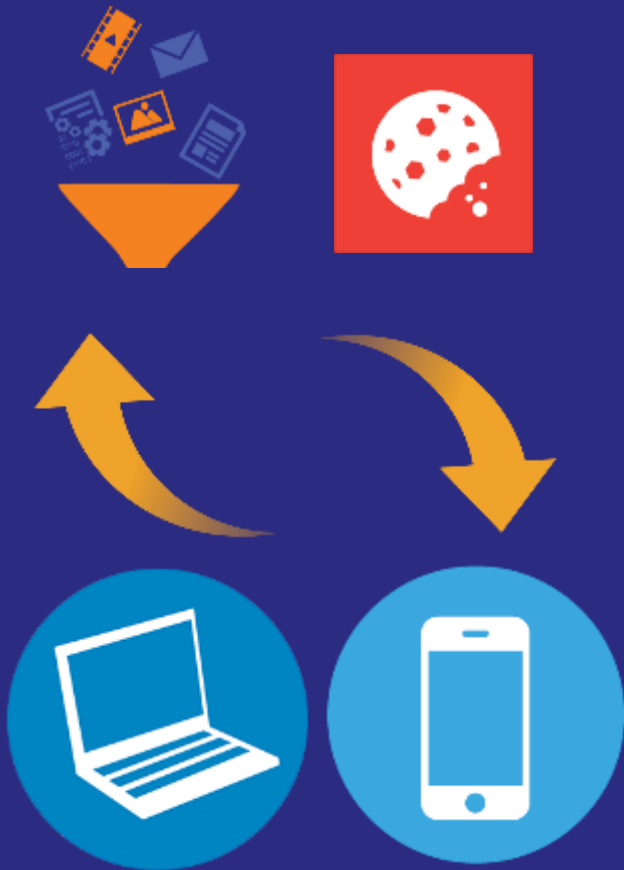
Exception for using the processing capabilities of a device & **collection of information** from the device

- Necessary for the **transmission** of the communication
- Necessary for providing the information society service requested
- Necessary for **web audience measuring** (carried out by the first party)
- User's **consent**

# ePRIVACY REGULATION: PROTECTING CONFIDENTIALITY



## Confidentiality of the device: General prohibition rule



### IMPACTS:

- New definition of consent, more difficult to collect?
- How can third parties without direct interaction with user can collect consent?
- impact on advertising revenue
- Encourage login system and profile creation (increasing personal data collection)
- Favour larger consumer facing companies in position to obtain consent
- ...



# ePRIVACY REGULATION: GETTING CONSENT



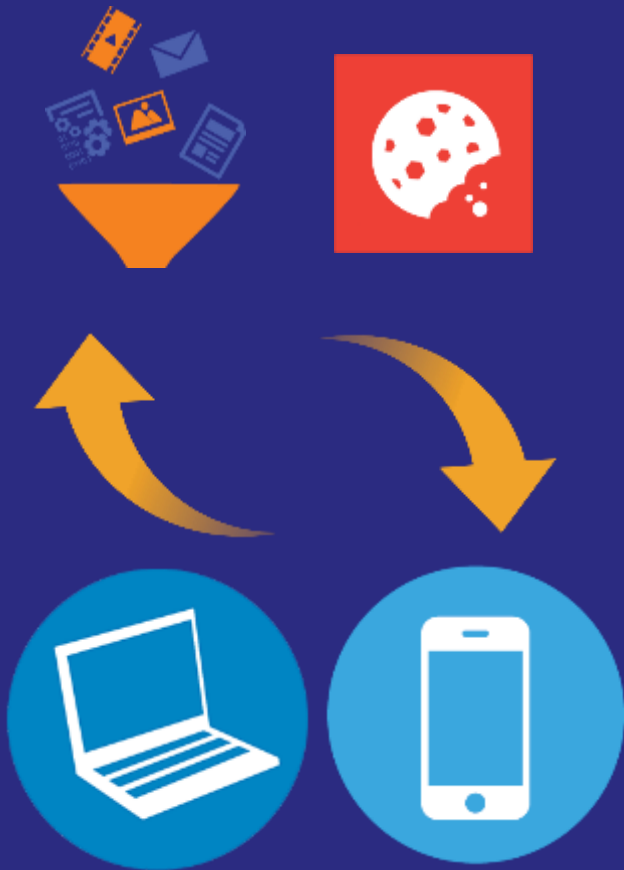
## How to get consent?

1st party: directly from the user when necessary

3rd party: no access to consumer

COMMISSION PROPOSAL: Internet browser to act as gate keeper

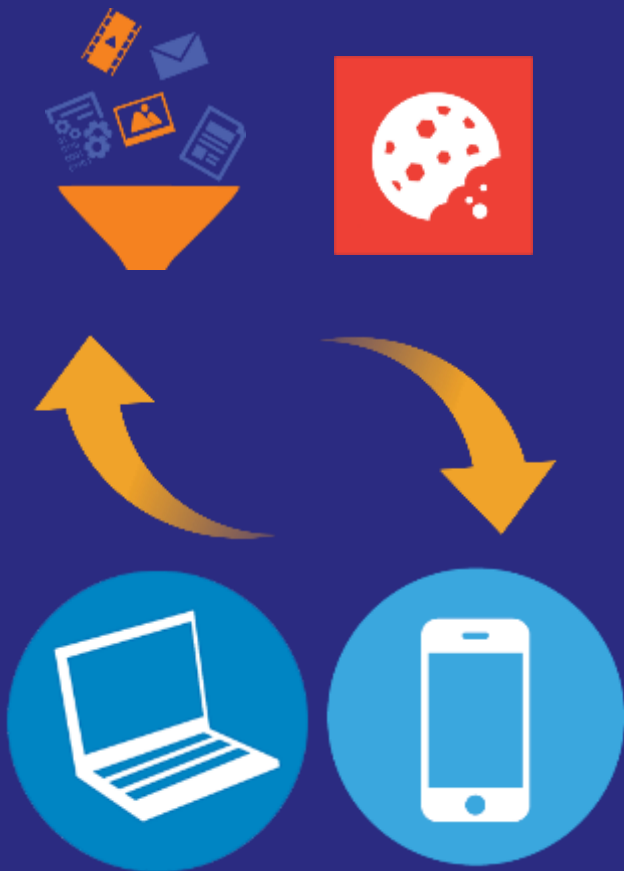
- User to express their choice regarding third party tracking
- Browser responsible for preventing third party tracking



# ePRIVACY REGULATION: GETTING CONSENT



## How to get consent?



### CHALLENGES:

How can first parties obtain consent?  
How can third party obtain consent?

What will be the incentive for browser to offer granular choice/privacy options?

This approach may not remove the cookies banners



# ePRIVACY REGULATION: CONSENT AS A CONDITION TO ACCESS CONTENT?



How to get consent?



## BIGGEST CHALLENGE:

Suggestion that user should not be denied access on the basis that they have refused to consent

Impact on the internet business model

# ePRIVACY REGULATION: OVERLAP WITH THE GDPR



25th May  
2018

Data Protection Directive /  
National Legislation

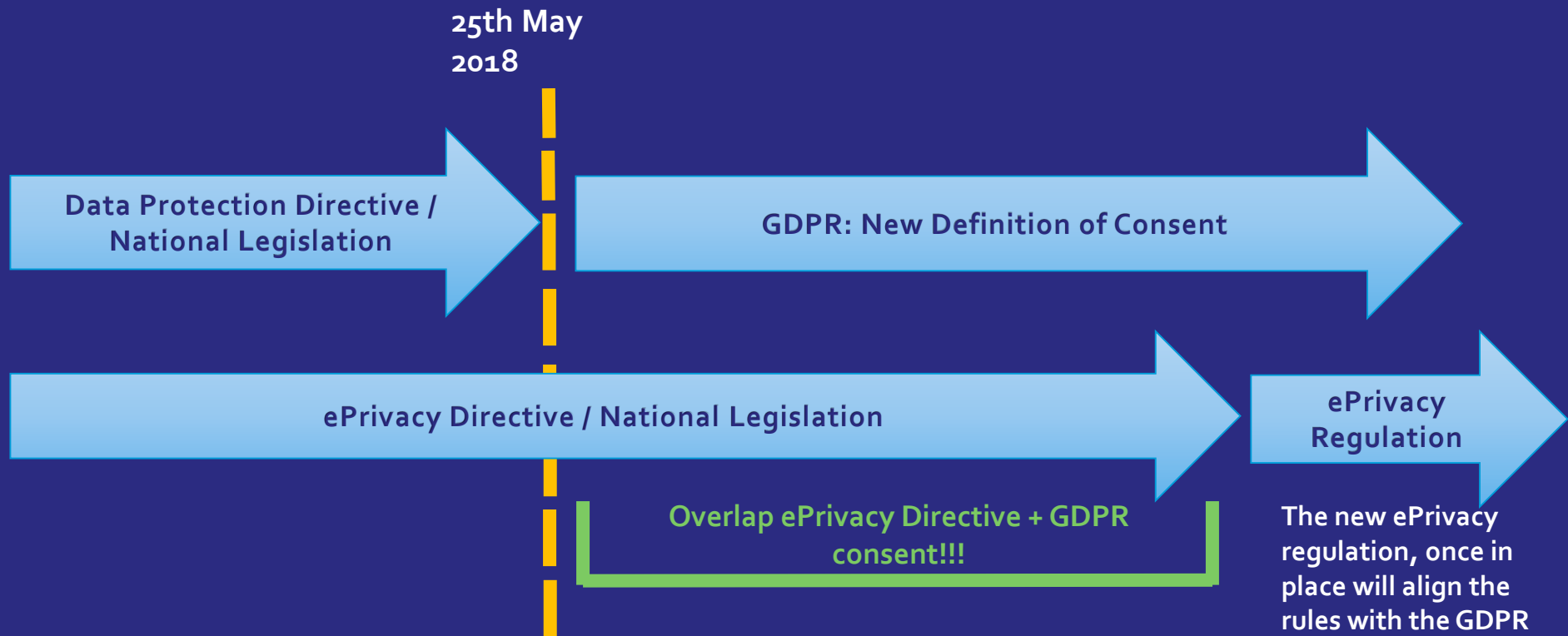
GDPR: New Definition of Consent

ePrivacy Directive / National Legislation

ePrivacy  
Regulation

Overlap ePrivacy Directive + GDPR  
consent!!!

The new ePrivacy  
regulation, once in  
place will align the  
rules with the GDPR



# ePRIVACY REGULATION: THE NEXT STEPS



## EUROPEAN PARLIAMENT

LIBE draft report: 827 Amendments  
JURI draft opinion: 470 Amendments  
ITRE draft opinion: 360 Amendments  
IMCO draft opinion: 180 Amendments



**1837**  
AMENDMENTS

### TIMING:

Work on compromise amendments in September.

MEP Lauristin Objective remain to have a text adopted by the European Parliament in October

### STRONG DIVISION AMONG MEPS

MEPs looking for a flexible text, aligned with the GDPR (EPP, ECR...)



MEPs not willing to deviate from privacy protection as a fundamental right (S&D, Greens...)

HOWEVER: Rapporteur MEP Marju Lauristin likely to leave the European Parliament in the Fall, to be replaced by MEP Birgit Sippel (Germany, S&D)

Likely to impact the timing of the adoption



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Merci !

Notre mission,  
Nos valeurs

**ENGAGÉS  
RASSEMBLÉS  
INNOVANTS**



de la data à la logistique

syndicat national de la communication directe