

**Dr. Nikolaus Marschik**  
Permanent Representation of Austria to the EU  
Avenue de Cortenbergh 30  
1000 Bruxelles  
Belgium

25 October 2018

Dear Ambassador,



The current direction Council is taking in relation to the ePrivacy proposal will not enhance user trust and confidentiality. We commend the ambitious work of the Austrian Presidency, particularly the previous text which made a good step in the right direction (20 September), but the latest text (19 October) for full discussion tomorrow leaves much to be desired.

BusinessEurope supports enabling a greater level playing field. The same services should play by the same rules. However, the current approach includes businesses that use communication services as a secondary function to deliver another with those offering it as a primary function.

The data economy has the potential to improve society in (e.g. transportation, energy, agriculture and health). But the deliverance of these innovative solutions relies on the ability for data to be processed and move to and from a multitude of entities. Including machine-to-machine communication within the scope would greatly impact this. Particularly if businesses are forced to demonstrate consent between these machines (non-users).

The continued mantra of only permitting consent as the sole legal basis to process data in an innovative manner (e.g. not for billing or security) is disproportionate and legally uncertain. The type of consent described is different from that in the General Data Protection Regulation (GDPR). Overreliance upon it will also severely restrict the ability for businesses to continue offering cutting edge services to consumers. We implore greater alignment with the GDPR to widen the possible permitted processing methods that feature within it.

Finally, we ask Council to continue their ambitious approach to enable a robust Regulation for Europe's digital economy that will allow industry to continue delivering solutions for society. We look forward to further cooperation with Council on this.

Yours sincerely,



Markus J. Böyrer