



Ms Minna Kivimäki,
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Permanent Representation of Finland to the EU
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Dear Ambassador,

I am writing in relation to the ongoing ePrivacy Council discussion. We understand attempts are being made to progress to COREPER for a trilogue mandate. We would like to explain, once again, why the business community strongly opposes moving towards a mandate for trilogues due to the form of the current Council text.

Europe has grand ambitions to globally lead in AI to benefit our economy, society and global leadership. If we fail, we welcome a future of innovation takers rather than makers. An ePrivacy legislation in this form leads us towards failure for the following reasons:

- Includes machine-to-machine communications and (non-personal) metadata;
- Treats all data within its scope as high-risk;
- Overlaps the GDPR by applying rules to stored data (after receipt);
- Vastly limits the opportunities of businesses to further process data to deliver innovative services (that are in demand);
- Contradicts the GDPR by dictating consent as the only realistic basis for processing/storage in order to deliver a solution.

This disproportionate mix will make machine learning, vital for AI, non-existent in Europe.

Business continues to apply the EU's Ethical Guidelines and the GDPR in support of human-centric AI. Council need not place overlapping, undetermined and contradicting rules on top of this. Business already invests in applying enhanced consent, greater transparency, privacy by design, the right to be forgotten and objection to profiling for marketing purposes, to name a few. This proposal will void these efforts across vast sectors of our economy, from eHealth to Smart Cars, Industry 4.0 applications to emerging IoT markets.



As great legal and technological changes have taken place since ePrivacy's impact assessment (pre-2017), we await Commission confirmation and the 2020 review of the GDPR. BusinessEurope believes Council is in an opportune position to take bold political leadership to demonstrate the immaturity and disproportionality of this file. A more beneficial direction could then be set to actually achieve greater privacy protection, innovative opportunities and Europe's strategic goals.

This can be achieved through shaping President von der Leyen's approach to digitalisation through determining how to: support Europe in the 5G race, lead in strategic domains (AI, high-performance/quantum computing, blockchain and microelectronics), support a vibrant data economy, raise our digital skills and abilities to defend from cyberattacks.

Yours sincerely,

Markus J. Beyrer