

Please find below our proposed amendments for these articles :

Presidency text of May 4	EDRi, Privacy International and Access Now's proposal
<p>Article 5</p> <p>Confidentiality of electronic communications data</p> <p>Electronic communications data shall be confidential. Any interference with processing of electronic communications data, such as by including listening, tapping, storing, monitoring, scanning or other kinds of interception, or surveillance or processing of electronic communications data, by persons- anyone other than the end-users concerned, shall be prohibited, except when permitted by this Regulation.</p>	<p>Article 5</p> <p>Confidentiality of electronic communications data</p> <p>1. Electronic communications data shall be confidential. Any interference with processing of electronic communications data, such as by including listening, tapping, storing, monitoring, scanning or other kinds of interception, or surveillance or processing of electronic communications data, by persons- anyone other than the end-users concerned, shall be prohibited, except when permitted by this Regulation.</p> <p>2. Confidentiality of electronic communications shall also apply to data related to or processed by terminal equipment.</p>

Presidency text of May 4	EDRi, Privacy International and Access Now's proposal
<p>(15a) The prohibition of interception of electronic communications data content under this Regulation should apply during their conveyance, i.e. until receipt of the content of the electronic communication by the intended addressee, i.e. during the end-to-end exchange of electronic communications content between end-users. The exact moment of the completion of the transmission receipt of electronic communications content may depend on the type of electronic communications service that is provided. For instance, depending on the technology used, for a voice call the transmission will be completed as soon as either of the end-users terminates the connection ends the call. For electronic mail or instant messaging, depending on the technology used, the transmission moment of receipt is may be completed as soon as the addressee has collected the message, typically from the</p>	<p>(15a) The technological design of electronic communications services has evolved considerably. Traditional telecommunications services (voice telephony and SMS) focus on providing transmission of electronic communications data, and centralised storage of content is not part of the technological design, except for temporary storage of text messages if the recipient is offline. After transmission, end-users gain complete control over their messages since they are only stored on the end-users' devices. For modern «over the top» electronic communications services, such as electronic mail and instant messaging services, permanent storage by the service provider of electronic communications data after transmission is often an integral part of the technological design. This offers convenience for end-users who can access their messages from multiple device and provides useful backup facilities that protect messages from being lost in case of hardware</p>

<p>server of the electronic communications service provider. Upon completion of the transmission receipt, electronic communications content and related metadata should be erased or made anonymous by the provider of the electronic communications service except when processing is permitted under this Regulation or when the end-users has entrusted the provider of the electronic communications service or another third party to record, store or otherwise process such data in accordance with Regulation (EU) 2016/679.</p>	<p>failure. However, it also increases the risk that electronic communications data will be processed for other purposes after transmission. Due to the technological design, end-users do not gain full control over the stored electronic communications data, unless they decide to delete their messages after reception, which is generally undesirable. In accordance with the principle of technological neutrality, the prohibition of intereception of inteferece with electronic communications data data content under this Regulation should apply to the provider of the electronic communications service during transmission and storage for as long as the electronic communications data is accessible by the service provider. the content of the electronic communication by the intended addressee, i.e. during the end-to-end exchange of electronic communications content between end-users. The exact moment of the completion of the transmission receipt of electronic communications content may depend on the type of electronic communications service that is provided. For instance, depending on the technology used, for a voice call the transmission will may be completed as soon as either of the end-users terminates the connection ends the call. For electronic mail or instant messaging, depending on the technology used, the transmission moment of receipt is may be completed as soon as the addressee has collected the message, typically from the server of the electronic communications service provider. Upon completion of the transmission receipt, electronic communications content and related metadata should be erased or made anonymous by the provider of the electronic communications service except when processing is permitted under this Regulation or when the end-users has entrusted the provider of the electronic communications service or another third party to record, store or otherwise process such data in accordance with Regulation (EU) 2016/679.</p>
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<p>Presidency text of May 4</p>	<p>EDRi, Privacy International and Access Now's proposal</p>
<p>Article 6 (2)</p>	<p>Article 6 (2)</p>
<p>(a) it is necessary for the purposes of network</p>	<p>(a) it is strictly necessary for the purposes of</p>

<p>management or network optimisation, provided that the purpose or purposes concerned could not be fulfilled by processing information that is made anonymous and for the duration necessary for that purpose, or to meet mandatory quality of service requirements pursuant to [Directive establishing the European Electronic Communications Code] or Regulation (EU) 2015/2120 9 for the duration necessary for that purpose; or</p> <p>(b) it is necessary for performance of the contract to which the end-user is party, including to the extent necessary for billing, calculating interconnection payments, detecting or stopping fraudulent, or abusive use of, or subscription to, electronic communications services; or</p>	<p>network management in accordance with Regulation (EU) 2015/2120 or network optimisation, provided that the purpose or purposes concerned could not be fulfilled by processing information that is made anonymous and for the duration technically necessary for that purpose. Practices such as deep packet inspection shall be prohibited. or to meet mandatory quality of service requirements pursuant to [Directive establishing the European Electronic Communications Code] or Regulation (EU) 2015/2120 for the duration technically necessary for that purpose. ; or</p> <p>(b) it is strictly necessary for performance of the contract to which the end-user is party, including to the extent necessary for billing, calculating interconnection payments, detecting or stopping fraudulent, or abusive use of, or subscription to, electronic communications services; or</p>
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Presidency text of May 4	EDRi, Privacy International and Access Now's proposal
<p>Article 6 (2)</p> <p>(fe) it is necessary for the purpose of statistical counting at the request of a public authority, provided that:</p> <ul style="list-style-type: none"> - the processing is limited to electronic communications meta-data that constitutes geolocation data that is pseudonymised, - such the processing could not be carried out by processing information that is made anonymous, such and the geolocation data is erased or made data anonymous when it is no longer needed to fulfil the purpose and at the latest 24 hours after its collection, and - such the geolocation data is not used to determine the nature or characteristics of an end-user or to build a profile of an end-user. <p>(ef) it is necessary for scientific research or statistical purposes counting not permitted in accordance with point (e) or for scientific research, provided it is based on Union or</p>	<p>Article 6 (2)</p> <p>(fe) it is strictly necessary for the purpose of statistical counting at the request of a public authority, provided that:</p> <ul style="list-style-type: none"> - the processing is limited to electronic communications meta-data that constitutes geolocation data that is pseudonymised, - such the processing could not be carried out by processing information that is made anonymous, such and the geolocation data is erased or made data anonymous when it is no longer needed to fulfil the purpose at the latest 24 hours after its collection and at the latest 24 hours after its collection, and - such the geolocation data is not used to determine the nature or characteristics of an end-user or to build a profile of an end-user. The data shall not be shared with third parties. <p>(ef) it is strictly necessary for scientific research</p>

<p>Member State law which shall be proportionate to the aim pursued and provide for specific measures, including encryption and pseudonymisation, to safeguard fundamental rights and the interest of the end-users. Processing of electronic communications metadata under this point shall be done in accordance with paragraph 6 of Article 21 and paragraphs 1, 2 and 4 of Article 89 of Regulation (EU) 2016/679.</p>	<p>or statistical purposes counting not permitted in accordance with point (e) or for scientific research, provided it is based on Union or Member State law which shall be proportionate to the aim pursued and provide for specific measures, including encryption and pseudonymisation, to safeguard fundamental rights and the interest of the end-users. Processing of electronic communications metadata under this point shall be done in accordance with paragraph 6 of Article 21 and paragraphs 1, 2 and 4 of Article 89 of Regulation (EU) 2016/679.</p>
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<p>Presidency text of May 4</p>	<p>EDRi, Privacy International and Access Now's proposal</p>
<p>Article 6</p> <p>3a. For the purposes of point (fe) of paragraph 2, the provider of the electronic communications service shall:</p> <p>(a) exclude electronic communications metadata that constitute geolocation data that reveal special categories of personal data pursuant to Article 9 of Regulation (EU) 2016/679 from processing where technically possible, and otherwise take their nature into account;</p> <p>(b) not share such data with the public authority or any other third parties, unless it is made anonymous;</p> <p>(c) prior to the processing carry out an assessment of the impact of the envisaged processing operations on the protection of electronic communications data and consult the supervisory authority. Points (2) and (3) of Article 36(2) and (3) of Regulation (EU) 2016/679 shall apply to the consultation of the supervisory authority; and</p> <p>(d) inform the end-user of specific processing on the basis of point (f) of paragraph 2 and give the right to object to such processing.</p>	<p>Article 6</p> <p>3a. For the purposes of point (fe) of paragraph 2, the provider of the electronic communications service shall:</p> <p>(a) exclude electronic communications metadata that constitute geolocation data that reveal special categories of personal data pursuant to Article 9 of Regulation (EU) 2016/679 from processing where technically possible, and otherwise take their nature into account;</p> <p>(b) not share such data with the public authority or any other third parties, unless it is made anonymous;</p> <p>(c) prior to the processing carry out an assessment of the impact of the envisaged processing operations on the protection of electronic communications data and consult the supervisory authority. Points (2) and (3) of Article 36(2) and (3) of Regulation (EU) 2016/679 shall apply to the consultation of the supervisory authority; and</p> <p>(d) inform the end-user of specific processing on the basis of points (e) and (f) of paragraph 2 and give the right to object to such processing.</p>