

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2000/0189(COD) Procedure completed
Electronic communications: processing of personal data, protection of privacy  Repealing Directive 97/66/EC <a href="#">1990/0288(COD)</a> Amended by <a href="#">2005/0182(COD)</a> Amended by <a href="#">2007/0248(COD)</a> See also <a href="#">2012/0011(COD)</a> Repealed by <a href="#">2017/0003(COD)</a>	
Subject 1.20.09 Protection of privacy and data protection 3.30.05 Electronic and mobile communications, personal communications	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs		29/08/2000
		TDI <a href="#">CAPPATO Marco</a>	
	Former committee responsible		
	<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs		29/08/2000
		TDI <a href="#">CAPPATO Marco</a>	
	<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs		29/08/2000
		TDI <a href="#">CAPPATO Marco</a>	
	Former committee for opinion		
	<b>BUDG</b> Budgets	The committee decided not to give an opinion.	
Council of the European Union	<b>JURI</b> Legal Affairs and Internal Market		13/09/2000
		ELDR <a href="#">THORS Astrid</a>	
	<b>ITRE</b> Industry, External Trade, Research, Energy		22/06/2000
		V/ALE <a href="#">SCHRÖDER Ilka</a>	
	<b>ENVI</b> Environment, Public Health, Consumer Policy		19/09/2000
		GUE/NGL <a href="#">BAKOPOULOS Emmanouil</a>	
	Council configuration	Meeting	Date
	<a href="#">Environment</a>	<a href="#">2439</a>	25/06/2002
	<a href="#">General Affairs</a>	<a href="#">2406</a>	28/01/2002
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2395</a>	06/12/2001
<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2374</a>	15/10/2001	
<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2364</a>	27/06/2001	
Telecommunications	<a href="#">2325</a>	22/12/2000	
Telecommunications	<a href="#">2293</a>	03/10/2000	
European Commission	Commission DG	Commissioner	

Key events			
12/07/2000	Legislative proposal published	COM(2000)0385	Summary
08/09/2000	Committee referral announced in Parliament, 1st reading/single reading		
03/10/2000	Debate in Council	<a href="#">2293</a>	
22/12/2000	Debate in Council	<a href="#">2325</a>	
27/06/2001	Debate in Council	<a href="#">2364</a>	
11/07/2001	Vote in committee, 1st reading/single reading		Summary
11/07/2001	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0270/2001</a>	
05/09/2001	Debate in Parliament		
06/09/2001	Decision by Parliament, 1st reading/single reading	<a href="#">T5-0441/2001</a>	Summary
06/09/2001	Report referred back to committee		
15/10/2001	Debate in Council	<a href="#">2374</a>	Summary
22/10/2001	Vote in committee, 1st reading/single reading		Summary
22/10/2001	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0374/2001</a>	
12/11/2001	Debate in Parliament		
13/11/2001	Decision by Parliament, 1st reading/single reading	<a href="#">T5-0588/2001</a>	Summary
06/12/2001	Debate in Council	<a href="#">2395</a>	
28/01/2002	Council position published	<a href="#">15396/2/2001</a>	Summary
06/02/2002	Committee referral announced in Parliament, 2nd reading		
18/04/2002	Vote in committee, 2nd reading		Summary
18/04/2002	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0130/2002</a>	
29/05/2002	Debate in Parliament		
30/05/2002	Decision by Parliament, 2nd reading	<a href="#">T5-0261/2002</a>	Summary
25/06/2002	Act approved by Council, 2nd reading		
12/07/2002	Final act signed		
12/07/2002	End of procedure in Parliament		
31/07/2002	Final act published in Official Journal		

Procedure reference	2000/0189(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	<p>Repealing Directive 97/66/EC <a href="#">1990/0288(COD)</a></p> <p>Amended by <a href="#">2005/0182(COD)</a></p> <p>Amended by <a href="#">2007/0248(COD)</a></p> <p>See also <a href="#">2012/0011(COD)</a></p> <p>Repealed by <a href="#">2017/0003(COD)</a></p>
Legal basis	Rules of Procedure EP 050; EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/15449

## Documentation gateway

Legislative proposal		<a href="#">COM(2000)0385</a> <a href="#">OJ C 365 19.12.2000, p. 0223 E</a>	12/07/2000	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES0048/2001</a> <a href="#">OJ C 123 25.04.2001, p. 0053</a>	25/01/2001	ESC	
Committee opinion	<b>ENVI</b>	PE297.223/DEF	22/03/2001	EP	
Committee draft report		PE302.241	05/06/2001	EP	
Committee opinion	<b>JURI</b>	PE294.950/DEF	14/06/2001	EP	
Amendments tabled in committee		PE302.241/AM	02/07/2001	EP	
Committee opinion	<b>ITRE</b>	PE286.135/DEF	04/07/2001	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0270/2001</a>	11/07/2001	EP	
Text adopted by Parliament, partial vote at 1st reading/single reading		<a href="#">T5-0441/2001</a> OJ C 072 21.03.2002, p. 0234-0286 E	06/09/2001	EP	Summary
Committee draft report		PE302.300	10/10/2001	EP	
Amendments tabled in committee		PE302.300/AM	13/10/2001	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0374/2001</a>	22/10/2001	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0588/2001</a> <a href="#">OJ C 140 13.06.2002, p. 0025-0132 E</a>	13/11/2001	EP	Summary
Council position		<a href="#">15396/2/2001</a> <a href="#">OJ C 113 14.05.2002, p. 0039 E</a>	28/01/2002	CSL	Summary
Commission communication on Council's position		<a href="#">SEC(2002)0124</a>	30/01/2002	EC	Summary
Committee draft report		PE311.019	20/03/2002	EP	
Amendments tabled in committee		PE311.019/AM	11/04/2002	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A5-0130/2002</a>	18/04/2002	EP	

Text adopted by Parliament, 2nd reading		<a href="#">T5-0261/2002</a> <a href="#">OJ C 187 07.08.2003, p. 0021-0103 E</a>	30/05/2002	EP	Summary
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2002)0338</a>	17/06/2002	EC	Summary
Document attached to the procedure		<a href="#">SEC(2006)0817</a>	29/06/2006	EC	
Follow-up document		COM(2006)0334	29/06/2006	EC	Summary
Follow-up document		C(2009)3200	12/05/2009	EC	
Follow-up document		<a href="#">SEC(2009)0585</a>	12/05/2009	EC	

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Directive 2002/58](#)  
[OJ L 201 31.07.2002, p. 0037-0047](#) Summary

## 2000/0189(COD) - 12/07/2000 Legislative proposal

**PURPOSE** : to ensure that a high level of personal data and privacy will continue to be guaranteed for all electronic communications services regardless of the technology used. **CONTENT** : the proposed Directive is intended to replace Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector, which was adopted by the European Parliament and the Council on 15 December 1997 and had to be transposed by 24 October 1998 at the latest. The proposal is not intended to create major changes to the substance of the existing Directive, but merely adapts and updates the existing provisions to new and foreseeable developments in electronic communications services and technologies. The majority of provisions of the existing Directive are therefore carried over in the new proposal, subject to minor drafting changes. One of the regulatory principles as set out in the context of the 1999 Review of the regulatory framework for electronic communications services, is the aim to create rules which are technology neutral, this is not to impose, nor to discriminate in favour of, the use of a particular type of technology, but to ensure that the same service is regulated in an equivalent manner, irrespective of the means by which it is delivered. This also implies that consumers and users should get the same level of protection regardless of the technology by which a particular service is delivered. In the present proposal the existing definitions of telecommunications services and networks in Directive 97/66/EC will be replaced by definitions of electronic communications services and networks to align the terminology with the proposed Directive establishing a common framework for electronic communications services and networks. Moreover, four new definitions are added of calls, communications, traffic data and location data to strengthen the common understanding of these terms and thereby improve the harmonised implementation of the relevant articles throughout the Community. ?

## 2000/0189(COD) - 11/07/2001 Vote in committee, 1st reading/single reading

The committee adopted the report by Marco CAPPATO (TGI, I) broadly approving the proposal under the codecision procedure (1st reading), subject to a number of amendments. While it agreed that Member States may restrict provisions of the directive to safeguard public security and conduct criminal investigations, the committee made it clear that such restrictions should be appropriate, proportionate and limited in time and that that general or exploratory electronic surveillance on a large scale could not be allowed. It also felt that Member States should not have a general right to request whatever traffic and location data they wished without the authorities stating a specific reason as to why such information was needed. Information should not be stored longer than was necessary for the transmission of data and for traffic management purposes. The committee also felt that, when accessing terminal equipment, service providers should not be allowed to ascertain or store any personal information without prior consent. As regards directories, it wanted to make sure that personal data in publicly-available printed or electronic directories was limited to what was necessary to identify a particular subscriber, unless that subscriber had given his or her unambiguous consent. The report also called for senders of junk mail to be obliged to supply an address to enable recipients to request that they be removed from the mailing list. Another amendment said that sending electronic messages for the purpose of direct marketing while disguising or concealing the identity of the sender should be prohibited.?

## 2000/0189(COD) - 06/09/2001 Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament voted by 204 to 129 with 155 abstentions to refer the draft directive on privacy protection in electronic communication back to its Committee on Citizen's Freedoms and Rights, Justice and Home Affairs for further debate on a compromise. Therefore, the report drafted by Mr Marco CAPPATO (TGI, I) was rejected. At issue was the question of spamming - the sending of unsolicited

junk mail. The House adopted by 259 votes in favour, 210 against and 6 abstentions an amendment that would prohibit it without prior permission of subscribers - the so-called 'opt-in system'. However, the end result of all the different amendments adopted individually was unacceptable to a majority of MEPs.?

---

## 2000/0189(COD) - 15/10/2001 Debate in Council

---

The Council has put in charge the Committee of Permanent Representatives to: - take up actively work on the only remaining open question concerning unsolicited communications (article 13 of the proposal), - to re-examine, in view of the apparent needs following the 11 September attacks, the question of the deletion of traffic data (article 15) in order to verify in which measure these provisions shall ensure a sufficient legal security. As for the eventual revision of a compromise on this article 15, the need to keep the balance between the protection of civil liberties and the demands on security from the State has been underlined.?

---

## 2000/0189(COD) - 22/10/2001 Vote in committee, 1st reading/single reading

---

The committee adopted the report by Marco CAPPATO (IND, I) on data protection, which had been referred back to committee at the September 2001 part-session. The committee decided to leave it up to the different Member States to determine under their own legislation whether unsolicited email for marketing purposes should be allowed only with the prior consent of subscribers ("opt-in") or whether subscribers should just have the right to insist on being removed from mailing lists ("opt-out"). By contrast, the committee wanted direct marketing by fax, SMS or automated calling systems to be allowed only with prior consent by subscribers. The committee also voted for subscribers to have the right to request that their names be removed from printed or electronic directories ("opt-out"). Furthermore, MEPs wanted data over and above what was necessary to identify a particular subscriber to be listed only with that person's prior consent. On the rest of the text, the amendments approved by Parliament when Mr Cappato's original report came up for debate and vote in the September 2001 part-session were reconfirmed. ?

---

## 2000/0189(COD) - 13/11/2001 Text adopted by Parliament, 1st reading/single reading

---

The European Parliament adopted the report by Marco CAPPATO (Ind, I) on the protection of privacy in the context of electronic communications. (Please refer to previous text.) Notwithstanding the prohibition on direct marketing by fax, SMS or automated calling systems, companies may use details obtained directly from their customers for direct marketing. Customers must have the right to stop this, free of charge and in an easy manner at any time. The sending of electronic messages for the purposes of direct marketing which disguise or conceal the identity of the sender is prohibited. After 30 months from the entry into force of the directive, subscribers must have the right to ask providers of electronic communications services to use technical solutions which allow them to view the sender and subject line of electronic mails, without having to download the rest of the contents or any attachments. National legislation complying with the directive must be effective 15 months after its entry into force. The Commission must submit an impact report no later than three years after the date of implementation.?

---

## 2000/0189(COD) - 28/01/2002 Council position

---

The Council welcomed the proposal, fully endorsing its objectives and approving most of the provisions. The Council's amendments to the text of the Commission proposal were motivated by the following major concerns: - the need to upgrade the level of protection for subscribers and users; - consideration of the technical requirements involved in providing new communications services; - a wording better reflecting the balance between protection of privacy requirements and the needs of Member State authorities responsible for ensuring security in a democratic society; - the need to clarify the scope of the Directive's provisions in accordance with the guidelines on the editorial quality of Community legislation. In many instances identical or similar changes are adopted in the European Parliament's amendments. On two important questions, directories of subscribers and unsolicited communications, the Council followed the Commission's opt-in approach but introduced technical and other adjustments to the latter's proposal. It was therefore unable to endorse certain European Parliament amendments which marked a departure from the Commission proposal. The Council agreed in particular to make it possible for directories of voice telephony subscribers to derogate from the obligation to obtain the consent of the persons concerned to the continuing inclusion of their information in these directories. The Council also thought it useful to clarify certain areas of the text of the Commission proposal in the light of the serious threat posed by the events of 11 September 2001. Article 15(1) was extended to include the retention of data for a limited period in accordance with the general principles of Community law among the legislative measures which Member States may adopt to safeguard certain major public security interests. Recital 11 was adapted, accordingly, in a balanced way. Finally, a reference to Article 15(1) was added to Article 6(1) as a reminder that limitations on the principle of the erasure of traffic data are possible not only for network or service providers but also for Member States' authorities responsible for defending the aforementioned public interests. In this context, the Council was unable to agree to certain European Parliament amendments.?

---

## 2000/0189(COD) - 30/01/2002 Commission communication on Council's position

---

The common position, including numerous EP amendments has introduced important clarifications and improvements to the original Commission text. The Commission can therefore support the new text and recommend it to the European Parliament. For the second reading it is important to note that the present draft Directive is part of a wider electronic communications regulatory package consisting of four other Directives and a Decision. Since full agreement has been reached between the institutions on the rest of the package on 13 December 2001, it is very important to try and achieve rapid agreement on this draft Directive too, in order to minimise the delay and hopefully still allow a streamlined date of application for all 6 new legal instruments.?

## 2000/0189(COD) - 18/04/2002 Vote in committee, 2nd reading

---

The committee adopted the report by Marco CAPPATO (IND, I) amending the Council's common position under the second reading of the codecision procedure. The committee retabled a number of amendments adopted by Parliament at first reading, which had not been taken up by the Council. In particular, it reiterated Parliament's position that user data should not be stored by electronic service providers for longer than necessary for billing purposes and that any restrictions by Member States on the provisions of the directive (in order to conduct criminal investigations or safeguard national or public security) should be appropriate, proportionate and limited in time. Moreover, general or exploratory electronic surveillance on a large scale should not be allowed. As regards the use of "cookies", the committee concurred with the Council position that users should have the right to refuse cookies, but felt that it would suffice merely to guarantee users the possibility of accessing clear information on the purposes of cookies. It thus rejected the Council's view that users should receive this information in advance. On the issue of "spamming", the committee reiterated Parliament's position at first reading that it should be left up to the Member States to decide whether users should give prior permission before being sent unsolicited commercial e-mail (the "opt-in" system) or should merely have the right to demand that they be removed from an existing mailing list ("opt-out"). Another retabled first reading amendment provided for subscribers to be entitled, 30 months after the directive's entry into force, to ask service providers to use technical solutions enabling them to view the sender and subject line of e-mails, and also to delete them, without having to download the rest of the contents or any attachments. The committee also restated Parliament's view that users should only be sent SMS messages for the purpose of direct marketing if they had given their prior consent. As regards directories, the committee retabled Parliament's first reading amendment stipulating that subscribers should have the right to request that their names or certain details be removed from printed or electronic directories and that personal data over and above what is necessary to identify a particular subscriber should be listed only with that person's unambiguous consent. Lastly, the report repeated Parliament's call for the Commission to submit an impact report on the implementation of the directive as a whole, and not just on the implementation of Article 13 (unsolicited communications).?

## 2000/0189(COD) - 30/05/2002 Text adopted by Parliament, 2nd reading

---

The European Parliament largely approved the compromise on the Directive on data protection that was worked out between the EPP-ED and the PES. There will be no conciliation procedure. It rejected the report by Marco CAPPATO (NI, Italy). On the contentious issue of data protection, it was agreed by Parliament that Member States may only lift the protection of data privacy in order to conduct criminal investigations or safeguard national or public security, when this is a necessary, appropriate and proportionate measure within a democratic society. In a recital, Parliament added that lawful interceptions of electronic communications should be subject to adequate safeguards in accordance with the European Convention on Human Rights and Fundamental Freedoms and with the rulings of the European Court of Human Rights. On spamming, Parliament accepted the Council's common position, thus approving an opt-in system for e-mail, faxes and automated calling systems, which means that users should give prior permission for receiving unsolicited electronic communications for marketing purposes. As regards "cookies", Parliament accepted the Council's common position that users should have the right to refuse them, specifying that users should be provided with clear and comprehensive information on their purposes. On the inclusion of personal data into public directories, Parliament again accepted the Council's common position, saying that users should give prior permission. Parliament has maintained the possibility for Member States to allow reverse search functions. Finally, the European Parliament asked for a review of the Directive within three years of its application.?

## 2000/0189(COD) - 17/06/2002 Commission opinion on Parliament's position at 2nd reading

---

The European Parliament adopted 18 amendments to the council's common position. The amendments were based on a compromise package of amendments that was put as an ensemble to the Parliament by the Council Presidency. The Commission can accept all the amendments in full. (Please refer to the documents of 18/04/02 and 30/05/02.)?

## 2000/0189(COD) - 12/07/2002 Final act

---

**PURPOSE** : to harmonise the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community. **COMMUNITY MEASURE** : Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications). **CONTENT** : by a qualified majority, with the Luxembourg delegation voting against, the Council adopted the Directive concerning the processing of personal data and the protection of privacy in the electronic communications sector incorporating all the amendments approved by the European Parliament at second reading. This text is the last element for reforming telecommunications regulations, as the other elements (four Directives and one Decision) have been adopted and were published in the Official Journal on 24 April 2002. Dovetailing with this regulatory framework for electronic communications infrastructure and associated services, the Directive aims to create rules which are technologically neutral, while maintaining a high level of data protection and privacy for citizens. In adopting this directive, the Council came to a solution on the question of spamming, the directive states that an opt-in system for e-mail, faxes and automated calling systems is created. This means that users should give prior permission for receiving unsolicited electronic communications for marketing purposes has been specified. Member States may adopt legislative measures to restrict the scope of the rights and obligations when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as referred to in Article 13(1) of Directive 95/46/EC. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds specified in this Directive. As regards "cookies", users should have the right to refuse them, specifying that users should be provided with clear and comprehensive information on their purposes. Before 31 October 2003 Member States shall bring into force the provisions necessary to comply with this Directive. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be

laid down by the Member States. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive and of any subsequent amendments to those provisions. ENTRY INTO FORCE : 31/07/2002.  
IMPLEMENTATION : 31/10/2003.?