

EuroISPA monthly report

February 2021

Over the past month, EU policymakers achieved significant progress in various dossiers that EuroISPA is following. On data protection, Member States finally achieved a common position on the ePrivacy Regulation, after negotiating for about 4 years. The Council will now negotiate the final text with the European Parliament, which already adopted its position in 2017. When it comes to the Digital Services Act and the Digital Markets Act, progress in the two institutions look different. The Council is driving its internal discussions at a sustained speed, under the Portuguese Presidency. The Parliament, on its side, has been much slower, because of internal conflicts of competences between various Committees. Similar internal fights are also taking place in the Parliament to determine the responsible Committee for the revision of the NIS Directive, which might slow down their work. On e-evidence, the first trilogue took place in February – in that context, EuroISPA has been active with bilateral meetings with several Member States and MEPs, to represent the point of view of European ISPs. Last but not least, the European Parliament’s Rapporteur for the regulation on the derogation from the ePrivacy Directive to combat CSAM online shared her frustration on the slow pace of the negotiations and blamed the Council for not willing to find compromises. EuroISPA is also active in this space, as the association will participate in this week’s roundtable with the European Commission to provide feedback on the upcoming legislation on combating child sexual abuse.

Data protection

Member States reach position on ePrivacy Regulation

On 10 February the Member States’ ambassadors agreed on a negotiating mandate for revised rules on the protection of privacy and confidentiality in the use of electronic communications services – the ePrivacy Regulation. This is the first time the Council has reached a consensus on this proposal, after 8 consecutive presidencies that led negotiations on this file since the beginning of 2017. The European Parliament agreed on its position in October 2017, within its LIBE Committee (Civil Liberties, Justice and Home Affairs) and with Birgit Sippel (S&D, DE), a staunch pro-privacy MEP, as Rapporteur. The final Council mandate proposes a 24 months application deadline from the entry into force. The legal ground of processing data for “compliance with a legal obligation” has been changed. The Council reinstated it to its original wording and limited to compliance with a legal obligation “to safeguard the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the safeguarding against and the prevention of threats to public security.” Given this development, the next steps are institutional trilogues, which are expected to start over the following months.

Actions:

- EuroISPA published a statement to react to the adoption of the Council negotiating mandate

European Commission publishes draft decisions on UK data adequacy

On 19 Friday 2021, the European Commission [announced](#) the publication of two draft data adequacy decisions for the UK ([one under the GDPR](#) and the other for the [Law Enforcement Directive](#)). While the European Commission considers that the UK's data protection laws "ensure a level of protection for personal data (...) that is essentially equivalent" to EU laws, the adequacy decisions will be reviewed within four years, and the UK will need to prove that its level of data protection is still "adequate" from the EU's point of view. The adequacy decisions will be scrutinized by the EU Member States before approving it. Then, having examined the European Data Protection Board's (EDPB) opinion, the European Commission will adopt the data adequacy decisions. Currently, data flows are possible under the [EU-UK Trade and Cooperation Agreement](#) but the interim period expires on 30 June 2021.

Intermediary Liability

Executive Vice-President Vestager exchanges views with European Parliament on DSA and DMA

In February, European Commission Executive Vice-President Vestager exchanged views with the European Parliament's IMCO (Internal Market and Consumers) and ECON (Economic and Monetary Affairs) Committees on the Digital Services Act and the Digital Markets Act. MEPs welcomed in generic terms the texts but asked for clarifications on the scope of the regulations and why certain practices were not encompassed in the proposals.

As regards the DSA, Rapporteur MEP Christel Schaldemose (S&D, DK) touched upon the issue of consumer protection and better safety for the trading of products online, to which Vestager responded she supported the MEP's stance that customers must know who they were buying from (know your business customer principle). However, she added that platforms would not be able to survive if they were responsible for all the importers selling on their platforms. When it comes to the DMA, Rapporteur MEP Andreas Schwab (EPP, DE) emphasised the need for algorithmic transparency obligations and asked why there was no mention of the "essential facilities doctrine" (in relation to data access) in the proposal. Vestager replied that algorithms need not be made public as they are constantly being updated. She added that the DMA was an intermediate solution between the approach taken under the "essential facilities" doctrine and ex-post competition enforcement.

Actions:

- *EuroISPA is currently preparing its position paper on the DSA;*
- *EuroISPA is organising a series of workshops on the DSA;*
- *EuroISPA to engage in meeting programme with Member States and MEPs.*

Cybersecurity

NIS2: conflict of competences between Parliament Committees slows down the work in the EP

The industry committee of the European Parliament (ITRE) pushed back against efforts by the internal market committee (IMCO) to lead parts of the drafting of the [Networks and Information Security Directive \(NIS2\)](#). The IMCO chairwomen had requested exclusive competence on parts of the text that deal with standardization, certification and oversight of services like digital platforms and cloud. She had said IMCO wanted to share work on the bill with the industry committee on other parts. However, The ITRE chairman reacted by arguing that his committee is exclusively competent for cybersecurity. Until the conflict of competence is resolved (the matter will be addressed at the next plenary session in the week of 8 March), EP policymakers cannot start working on the text. The Parliament Committee that is assigned leadership over the bill will not only have the right to amend it, but also to represent Parliament in negotiations with the Council and the Commission to finalize the legislation.

Actions:

- *EuroISPA to finalize its position paper on the revision of the NIS Directive.*

E-Evidence inter institutional negotiations kick off in February

The first meeting of the three institutions (trilogue) to negotiate the final e-evidence text took place on 10 February. Negotiators presented their main political lines and concluded with an agreement to continue discussions at a technical level (24, 25 February) to prepare for a second trilogue on 18 March. One of the Parliament's negotiators and shadow rapporteur of the file, MEP Sergey Lagodinsky (Greens, DE) briefed the public on the outcomes of the this first encounter, noting there were some initial concerns related to the efficiency of the notification of the executive authority, data localisation, territorial jurisdiction and also related to the differences in criminal law between Member States, with civil groups pointing out that this package can allow for politically motivated cross-border prosecutions and abuses of fundamental rights for political dissidents and journalists.

Actions :

- *EuroISPA is organizing a series of meeting with relevant MEPs and Member States' representatives to discuss our recommendations for the E-Evidence trilogues. So far, EuroISPA's representatives have met the team of MEP Lagodinsky (Greens, DE), and the representatives of the governments of France, Ireland, Finland and Belgium.*

Safer Internet: development trilogues

Inter-institutional negotiations on the ePrivacy Directive derogation to combat CSAM proceed slowly

On 1 March, MEP Birgit Sippel (S&D, DE), Rapporteur of the regulation on the derogation from the ePrivacy Directive to combat CSAM online, updated the Committee on Civil Liberties, Justice and Home Affairs (LIBE), on the interinstitutional negotiations on the file. MEP Birgit Sippel, expressed their frustration with the slow progress of the negotiations and blamed the Council for not making constructive proposals during the trilogue of 23 February. MEP Sophia in 't Veld also expressed her frustration with the lack of progress and MEP Patrick Breyer referred to case law by the Court of Justice

of the EU to outline that the indiscriminate scanning of all communications is not helpful for the prosecution of crimes related to child sexual abuse, noting that child sexual abuse needs to be tackled in a more holistic way (e.g., in educational institutions and churches).

Actions :

- *EuroISPA will participate in a European Commission's meeting with companies on the upcoming legislation on combating child sexual abuse on 5 March.*
- *EuroISPA to contribute to the Commission public consultation on the upcoming legislation on combating child sexual abuse.*