

EuroISPA monthly report

October 2018

As we draw closer to the end of 2018, it is highly unlikely the Parliament will conclude work on the e-evidence dossier before the EU Elections in May. Similarly, progress in Council on the ePrivacy proposal is extremely slow, as the Austrian Presidency introduced mere cosmetic changes in its latest text. By contrast, the interinstitutional negotiations on the Copyright Directive reform have been constructive. As regards the proposal on terrorist content online, the European Commission put pressure on the institutions to achieve a position by the end of the year, to start interinstitutional negotiations in 2019.

Intermediary liability

Terrorist content online regulation Rapporteur and Shadows confirmed

The leading Committee in charge of drafting the European Parliament's position will be LIBE (Civil Liberties, Justice and Home Affairs). The rapporteur, Helga Stevens (ECR, Belgium), is already co-rapporteur of an own-initiative report of the European Parliament on terrorism. The shadow rapporteurs, representing the other political groups, will be:

- Rachida Dati (EPP, France)
- Josef Weidenholzer (S&D, Austria)
- Maite Pagazaurtundua Ruiz (ALDE, Spain)
- Eva Joly (Greens/EFA, France, shadow)
- Cornelia Ernst (GUE/NGL, Germany)
- Julia Reda (Greens/EFA, Germany, IMCO rapporteur for opinion)

Commissioner King presents terrorist content online proposal to the Parliament

On 4 October, Commissioner Julian King (Security Union) held an exchange of views with MEPs from the Special Committee on Terrorism on the Commission's proposal to tackle terrorist content online. While he recognised that the EU Internet Forum proved to be a good platform for cooperation, he said that terrorist content online is migrating to smaller platforms, who face difficulties in dealing with it. Commissioner King stressed several times that "SMEs requested this proposal", to obtain legal clarity and receive assistance in identifying terrorist content online (through removal orders). However, the Commissioner did not mention that such measures might be financially burdensome for SMEs, nor that they might find it difficult to implement proactive measures. In terms of next steps, the European Commission called for the Parliament and the Council to have a negotiating mandate by the end of 2018, with trilogues finished by early 2019.

Actions:

- Finalisation of points of critique on terrorist content online proposal
- Ongoing institutional outreach (European Parliament and Member States)
- Dr. Maximilian Schubert (Vice-President of EuroISPA) will participate in the Council of Europe thematic session on "Terrorism and the Internet" to showcase the association's position.

Innovation and growth

Negotiators exchange views on Copyright Directive articles 11 and 13 in constructive second trilogue

On 25 October, the European Commission, Parliament, and Council, held their second trilogue meeting on the Copyright Directive reform. Both the Council Presidency and the European Parliament reiterated their willingness to make rapid progress on this file to reach a political compromise by the end of 2018. On Articles 11 (ancillary copyright) and 13 (users' uploads), discussions will first take place at the technical level, to prepare text options for political consideration. In terms of next steps, the next trilogue will take place on 26 November 2018 – negotiators will probably discuss potential options on Articles 11 and 13. A fourth trilogue will take place on 13 December 2018.

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Actions:

- [Outreach programme with Member States \(Czech Republic, Denmark, Sweden, Estonian Permanent Representations\)](#)
- Development of EuroISPA alternative amendments

Cybersecurity/cybercrime

Rapporteur rules out e-evidence will be passed by current legislature, Council publishes revised text Secretariat understands that it is highly likely that the European Parliament will not adopt its position by the end of this legislature, as signalled by rapporteur MEP Birgit Sippel (S&D, Germany). Instead, MEP Sippel will release a working document on the file, to be followed by a series of working documents on different questions to be co-authored with the Shadow Rapporteurs.

In Council, the Austrian Presidency has released a [revised text of the Regulation](#), including two options for a notification procedure upon the issuing of a Production Order for content data. The Austrian Presidency sets out two options to be discussed by the Member States - notably notification of either the Member State of residence of the affected person, or of the enforcing State (where the service provider is established). Notification has been proposed only for Production Orders pertaining to content data. We understand that there remains division in the Council over the Member State who should be notified, its practicability, as well as the fact that only content data is currently covered. Here, several Member States would like to expand the data categories to be included.

Actions:

- EuroISPA lunch debate, hosted by MEP Daniel Dalton (ECR, UK): which was successful in gathering key institutional and industry stakeholders, as well as emphasising EuroISPA's central concerns over the e-evidence proposal.
- Meeting with MEP Sippel, Rapporteur on e-evidence
- Meeting with Romanian COPEN Attaché
- Speaker during the CEPS Justice Task Force on e-evidence, regrouping EU officials, practitioners, civil society and industry to discuss the file.
- EuroISPA has been invited to speak at the European Parliament's hearing on e-evidence in November, and will be discussing the speaking points with Members later this month.

Data Protection

Austrian Presidency release revised text on ePrivacy

Ahead of the upcoming TELECOM Working Party on 26 October, the Austrian Presidency has released the latest draft of the ePrivacy Regulation. The majority of the changes to the text are cosmetic. Furthermore, the Presidency has made amendments to the text, of interest to Articles 6 and 8. With regards to Article 6, the Presidency has introduced wording which allows the processing of electronic communications data when necessary for the protection of terminal equipment, as well as aiming to give greater clarity that only electronic communications service contracts (as opposed to any kind of contract) would give the right to processing under Article 6. Moreover, efforts have been made to ensure greater alignment with the GDPR. In the case of Article 8, further provisions have been reintroduced relating to locating terminal equipment in cases of emergency communications. The Council negotiations continue to be protracted, with divisions remaining over some key areas, where the Austrian Presidency also have not been placing a high priority on the negotiations on this file.