

Draft ePrivacy Regulation Clears Significant EU Parliament Hurdle

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By [Stephen Gardner](#)

A proposed European Union-wide regulation on privacy in electronic communications cleared a significant hurdle Oct. 26 as the European Parliament voted to move the draft law for discussion with EU member countries.

The proposed ePrivacy Regulation would replace the present ePrivacy Directive. The ePrivacy Directive covers electronic communications privacy and behavioral advertising on the internet, requiring such data to remain confidential unless user consent is given for processing. The law also regulates the use of cookies, and sets parameters for the use of communications traffic data, such as time and duration of calls, web-browsing behavior, and geolocation data. The proposed new regulation would also cover over-the-top communication services such as Facebook Inc.'s WhatsApp Inc., [Amazon.com](#) Inc.'s Amazon Video, and Netflix Inc.

EU lawmakers approved the opening of talks with EU member countries by a 318 to 280 vote, with 20 abstentions. No date has been set for the talks between the European Parliament and the Council of the EU, which represents the 28 EU member countries. The parliament's starting point in the negotiations is the version of the ePrivacy Regulation approved Oct. 19 by the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The Council of the EU hasn't adopted a position on the proposed legislation.

Some EU lawmakers wanted to further discuss the proposal before starting talks with EU member countries, saying the draft regulation goes too far in restricting the use of cookies—packets of data used by websites to save information on and identify certain users or computers—to target internet users with advertising and other communications.

The LIBE version of the proposed regulation is “super-prescriptive” and online publishers and advertisers are calling for its overhaul during discussions with the council, Matthias Matthiesen, privacy and public policy manager for IAB Europe, which represents digital advertisers, told Bloomberg Law Oct. 26.

Making major changes to the proposed regulation at the council discussion stage may not be a far-fetched goal.

The “quite divided” parliament vote showed that there will be ample room for changes when the parliament and council negotiate a final version, Nick Johnson, a partner and chairman of the brands, advertising and marketing services group at Osborne Clarke in London, told Bloomberg Law Oct. 26. “It's likely that a more moderate and better balanced version” of the ePrivacy Regulation will emerge, he said.

Also of concern is the draft legislation's potential inconsistency with the EU General Data Protection Regulation (GDPR), which takes effect in May 2018.

The LIBE position “overly relies on consent, which is not the case within the GDPR,” Iva Tasheva, privacy and policy manager for DigitalEurope, told Bloomberg Law Oct. 26. Corporate members of DigitalEurope include Adobe Systems Inc., Apple Inc., Dell Inc., and Alphabet Inc.'s Google, among other