

Article 8(1) – Protection of Information...: Text, Redraft, and Amendments 85-92 to the ePR

Commission's Text

1. The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the **end-user** concerned shall be prohibited, except on the following grounds:
 - (a) it is necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or
 - (b) the **end-user** has given his or her consent; or
 - (c) it is necessary for providing an information society service requested by the **end-user**; or
 - (d) if it is necessary for **web audience** measuring, provided that such measurement is carried out by the provider of the **information society service requested by the end-user**.

Council's Redrafts

1. The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the end-user concerned shall be prohibited, except on the following grounds:
 - (a) it is necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or
 - (b) the end-user has given his or her consent; or
 - (c) it is necessary for providing an information society service requested by the end-user; or
 - (d) ~~if~~ it is necessary for ~~web~~ audience measuring, provided that such measurement is carried out by the provider of the information society service requested by the end-user **or by a third party on behalf of the provider of the information society service provided that conditions laid down in Article 28 of Regulation (EU) 2016/679 are met;** or
 - (e) it is necessary for a security update provided that:
 - i. security updates are necessary and do not in any way change the privacy settings chosen by the end-user are not changed in any way,
 - ii. the end-user is informed in advance each time an update

Parliament's Amendments

1. The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the **user** concerned shall be prohibited, except on the following grounds:
 - (a) it is **strictly** necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or
 - (b) the **user** has given his or her **specific** consent; or
 - (c) it is **strictly technically** necessary for providing an information society service **specifically** requested by the **user**; or
 - (d) if it is **technically** necessary for measuring **the reach of an information society service requested by the user**, provided that such measurement is carried out by the provider, **or on behalf of the provider, or by a web analytics agency acting in the public interest including for scientific purpose; that the data is aggregated and the user is given a possibility to object; and further provided that no personal data is made accessible to any third party and that such measurement does not adversely affect the fundamental rights of the user; Where audience measuring takes place on behalf of an information society service provider, the data collected shall be processed only for that provider and shall be kept separate from the data collected in the course of audience measuring on behalf of other providers; or**
 - (da) it is necessary to ensure security,

possibility to postpone or turn off the automatic installation of these updates;
or
(f) it is necessary to locate, at the time of the incident, a caller of an emergency call from the terminal by organisations dealing with emergency communications.

equipment of the end-user, by means of updates, for the duration necessary for that purpose, provided that:

- (i) this does not in any way change the functionality of the hardware or software or the privacy settings chosen by the user;*
- (ii) the user is informed in advance each time an update is being installed; and*
- (iii) the user has the possibility to postpone or turn off the automatic installation of these updates;*

(db) in the context of employment relationships, it is strictly technically necessary for the execution of an employee's task, where:

- (i) the employer provides and/or is the user of the terminal equipment;*
 - (ii) the employee is the user of the terminal equipment; and*
 - (iii) it is not further used for monitoring the employee.*
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1a. No user shall be denied access to any information society service or functionality, regardless of whether this service is remunerated or not, on grounds that he or she has not given his or her consent under Article 8(1)(b) to the processing of personal information and/or the use of processing or storage capabilities of his or her terminal equipment that is not necessary for the provision of that service or functionality.