



Request for clarification regarding the scope of ePrivacy Regulation proposal COM (2017)10

The Digital Single Market (DSM) strategy aims to open up digital opportunities for people and business and enhance Europe's position as a world leader in the digital economy. Its implementation has led to the modernization of the data protection framework with notably the adoption, in April 2016 of the General Data Protection Regulation (GDPR) and with the proposal for several other texts such as the European Electronic Communications Code Directive or the proposal for a Regulation on Privacy and Electronic Communications (ePrivacy), which are currently under review.

The objective of the draft ePrivacy regulation is to align the rules for electronic communications to the GDPR and ensure trust in the DSM.

However some questions concerning the scope of the ePrivacy proposal remain unclear and require urgent clarification as the goal of the Commission is to swiftly work with the EP and Council to ensure its adoption by May 25, 2018 when the GDPR will enter into application.

1. What does Machine to Machine (M2M) communication mean?

The construction equipment sector has entered the area of digitalisation and autonomization. The inter communication between devices or machines, without the interference of mankind, enables the provision of more efficiency. For example warehouse solutions can be optimized, remote control of machines can be facilitated and better fleet management solutions can be found which can reduce fuel consumption, improve truck loading capabilities, localize tools quicker and optimize maintenance).

Connectivity is becoming a condition for performance and cost efficiency for a jobsite.

The data exchanged between the machines themselves, in such B2B environment, does not aim to capture information about the private life of the operator using the machine/ device but exclusively the data about the machine itself (hours of use, localization, level of pressure in the tyres....).

If personal information was captured it would already fall in scope of the GDPR.

However when reading the ePrivacy Regulation proposal, recital 12 provides that: *'The transmission of machine-to-machine communications involves the conveyance of signals over a network and, hence, usually constitutes an electronic communications service. In order to ensure full protection of the rights to privacy and confidentiality of communications, and to promote a trusted and secure Internet of Things in the digital single market, it is necessary to clarify that this Regulation should apply to the transmission of machine-to-machine communications'*.



What is understood by “*machine to machine communication*” in the Regulation the proposal remains uncertain and requires urgent clarification. The purpose of the ePrivacy Regulation, which will repeal the current Directive 2002/58/EC, is to broaden the scope of the Directive to better protect private life and personal data in electronic communication, which is not in essence what construction equipment communication captures.

Therefore the communication of data between machines for a B2B purpose should be expressly excluded from the scope of the ePrivacy Regulation.

2. Whose consent should be required with the terminal equipment?

If indeed M2M communications, understood as communication between devices placed on construction equipment or between construction equipment themselves, were in scope of the ePrivacy Regulation, which consent should be required to enable such electronic communication?

Recital 15 of the Regulation proposal provides that: “(...) *The prohibition of interception of communications data should apply during their conveyance, i.e. until receipt of the content of the electronic communication by the intended addressee (...)*”.

This suggests that the transmission lasts until the receipt by the end-user and not the service provider.

However article 8 of the proposal prohibits “The use of processing and storage capabilities of terminal equipment and the collection of information from end-users’ terminal equipment (...) other than by the end-user concerned “ except (...) “if the end-user has given his or her consent”.

Who should be considered as the end-user?

Would the operator driving the machine be considered as the end-user, when his/her personal data is already protected under the GDPR, or should it be the operators employer, which should take the necessary commercial agreement to secure the information?

Additional guidance is still needed to make sure that the ePrivacy Regulation is a success for digital business.