

EN
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Answer given by Mr Breton
on behalf of the European Commission
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The ePrivacy Directive¹ provides the right to privacy and confidentiality of electronic communications. Its Article 9 provides that location data of users or subscribers can be processed only when made anonymous or with their consent for the provision of a value-added service, meaning any service requiring such processing beyond what is necessary for the transmission of a communication or billing. Consent is defined in Article 4(11) of the General Data Protection Regulation (GDPR)².

Article 15(1) of the ePrivacy Directive provides that Member States may adopt laws to restrict the scope of the rights and obligations provided in Article 9, also for the purpose of preventing, investigating, detecting and prosecuting criminal offences. Any limitation to this fundamental right must be set out in law, for limited purposes, respect the essence of the fundamental rights and be necessary, appropriate and proportionate. In the event that excessive use of information leading to an indiscriminate loss of privacy for taxpayers were to be established, it must be noted that the Court of Justice of the EU interprets the requirements for any restrictions in a strict way, especially regarding the proportionality of any restrictive measures and procedural safeguards.

The Charter of Fundamental Rights of the EU applies to Member States when they are implementing EU law³. The monitoring and enforcement of the application of the GDPR and the ePrivacy Directive fall within the competence of the national supervisory authorities and courts, without prejudice to the competences of the Commission as Guardian of the Treaties. It is for Member States to ensure that fundamental rights are effectively respected in accordance with their national law and the Charter of Fundamental Rights of the EU.

¹ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, OJ L 201, 31.7.2002, p. 37.

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

³ According to Article 51(1) of the Charter of Fundamental Rights of the European Union.