

[EU Citizens See Need for Cookies Directive Update](#)

By George R. Lynch

Aug. 4 — European Union citizens overwhelmingly agreed that the European Union e-Privacy Directive needs an update, according to preliminary findings of a public consultation released Aug. 4 by the European Commission.

The preliminary results of the public consultation are in line with the European Data Protection Supervisor Giovanni Buttarelli's July 25 opinion that the e-Privacy Directive should account for new technologies and increased data protection laws (21 ECLR 1255, 7/27/16).

The e-Privacy Directive is outdated in many respects, Lokke Moerel, senior of counsel at Morrisson & Foester LLP in Berlin, told Bloomberg BNA Aug. 4. “It is essentially limited to traditional electronic communication services, like telecommunications companies,” and doesn't take into consideration more modern types of neutral communications carriers, such as Voice Over Internet Protocol (VoIP), e-mail and instant messaging, he said.

“The revision of the e-Privacy Directive is a good thing,” Moerel said.

The e-Privacy Directive (2002/58/EC), last updated in 2009 , governs the protection of personal data and the electronic communications sector's approach towards privacy. The review is part of the Commission's Digital Single Market Strategy, which seeks to build trust in online services.

The European Commission, the EU's executive arm, began a consultation on the revision of the e-Privacy Directive in April . The Commission said it will publish legislative proposals by the end of 2016.

Preliminary Results Show Consensus

The Commission's public consultation findings include:

- 76 percent of the citizens and civil society organizations that responded

believe the e-Privacy Directive hasn't achieved its objectives, or has only to a limited extent achieved its objectives of ensuring full protection of privacy and confidentiality of communication;

- 83 percent of citizen and civil society respondents agreed that there was a clear added value in having specific privacy rules for the electronic communications sector;
- nearly 70 percent of the combined responses from industry, citizens and civil society say that one single national authority should be entrusted to enforce the rules, but only half of the public body respondents agree;
- 87 percent of citizens and civil society and 70 percent of public authorities believe that information service providers should not have the right to prevent access to their services if users refuse the storing of identifiers, such as cookies; and
- 76 percent of citizens and civil society respondents believe that the scope of the rules should be broadened to cover the over-the-top service providers when they offer communications services such as VoIP or instant messaging.

Moerel said that “the only result that surprised me was the fact that all categories thought that one single authority should enforce the e-Privacy rules, and thought the national data protection authorities most suited.” Companies' preference for “the data protection authorities may also have something to do with the fact that these authorities have shown less teeth in the past than their telecommunications counterparts,” she said.

Commission Objectives

The Commission's review of the e-Privacy Directive has three objectives:

1. ensuring that the Directive is consistent with the EU General Data Protection Regulation;
2. bringing the Directive in line with the current market and technological reality; and

3. enhancing the security and confidentiality of EU communications.

Although the results of the survey may not be predictive of the e-Privacy Directive amendments, Moerel said, there is still room for change. The focus of the changes will be on “new exceptions to the consent requirement for cookies;” whether consent for different uses will be bundled or users will be able to accept some uses and reject others; whether providers are able to deny services to users who refuse cookies or consent for certain uses; and whether security requirements will be extended to cover end-user equipment, software and network components such as SIM cards, Moerel said.

Respondents included, 162 citizens; 186 from industries such as electronic communications network providers, internet content providers and trade associations, among others; 40 from public bodies that enforce the e-Privacy Directive; and 33 from civil society and consumer associations.