

EAI position paper on the proposed EU ePrivacy Regulation

This paper represents an update to the EAI position paper that was sent to you in March 2020, setting out the main issues concerning the Electricity Association of Ireland ('EAI') arising out of the proposed ePrivacy Regulation ("ePR"). The ePR applies to the activities of the energy sector since smart meters fall within the scope of a notion of 'terminal equipment' referred to in the draft.

We have closely followed the developments on the ePR since 2017 and acknowledge that the regulation of electronic communications is a complex matter, as it must strike a balance between protecting data and boosting digitization in the EU.

Since our first communication with you in March, there have been significant developments in the ePR legislative process. We are concerned that recent changes to the direction of the Regulation may harm our industry.

Of greatest concern to our sector, is the alignment of the ePR with GDPR. The initial proposal, published in 2017, was not aligned with GDPR and we consider that this would lead to legal uncertainty and unreasonable burden on service providers. Since the publication of the proposed Regulation, the file has been discussed by several Council Presidencies, each failing to come to a compromise position on the text.

Draft Article 8 of the ePR allows the collection of information from terminal equipment under certain circumstances. The Croatian Presidency included legitimate interest as a legal basis for processing data, in line with GDPR, an approach which the Energy sector welcomed and supported. Under this draft, the permissible circumstances have been the most similar to the grounds for personal data processing foreseen by the GDPR, including consent, legitimate interest, as well as a request for service. However, in June 2020, the Croatian draft failed to gain general consensus among member states.

The German draft takes a step back, eliminating legitimate interest as well as narrowing down the 'contractual' basis to 'services specifically requested by the customers'. Given the complexity of the energy systems – e.g. particular infrastructure and multiple stakeholders engaged in the same process (suppliers + network operator) with multiple actors performing complex actions, that are not visible to the end consumers, this is an extremely limiting and unrealistic limitation to place on data processing activities. This change represents increased legal uncertainty when and to what extent the ePrivacy or the GDPR will be applicable to activities of our sector.

We understand that the German Presidency's proposal has been rejected by member states and that the file will now be transferred to the Portuguese Presidency. The new Presidency will have the opportunity to draft their own proposal for the ePR, which we hope will reflect the approach of the Croatian Presidency and allow for a more pragmatic and workable solution for the energy sector and other affected sectors across the EU.



We ask for your continued support for the inclusion of a broad basis for data processing, in line with GDPR, including legitimate interest, and for a text that does not limit innovation in our sector and allows us to continue to serve our customer's needs.