

EDRi

PROTECTING DIGITAL FREEDOM

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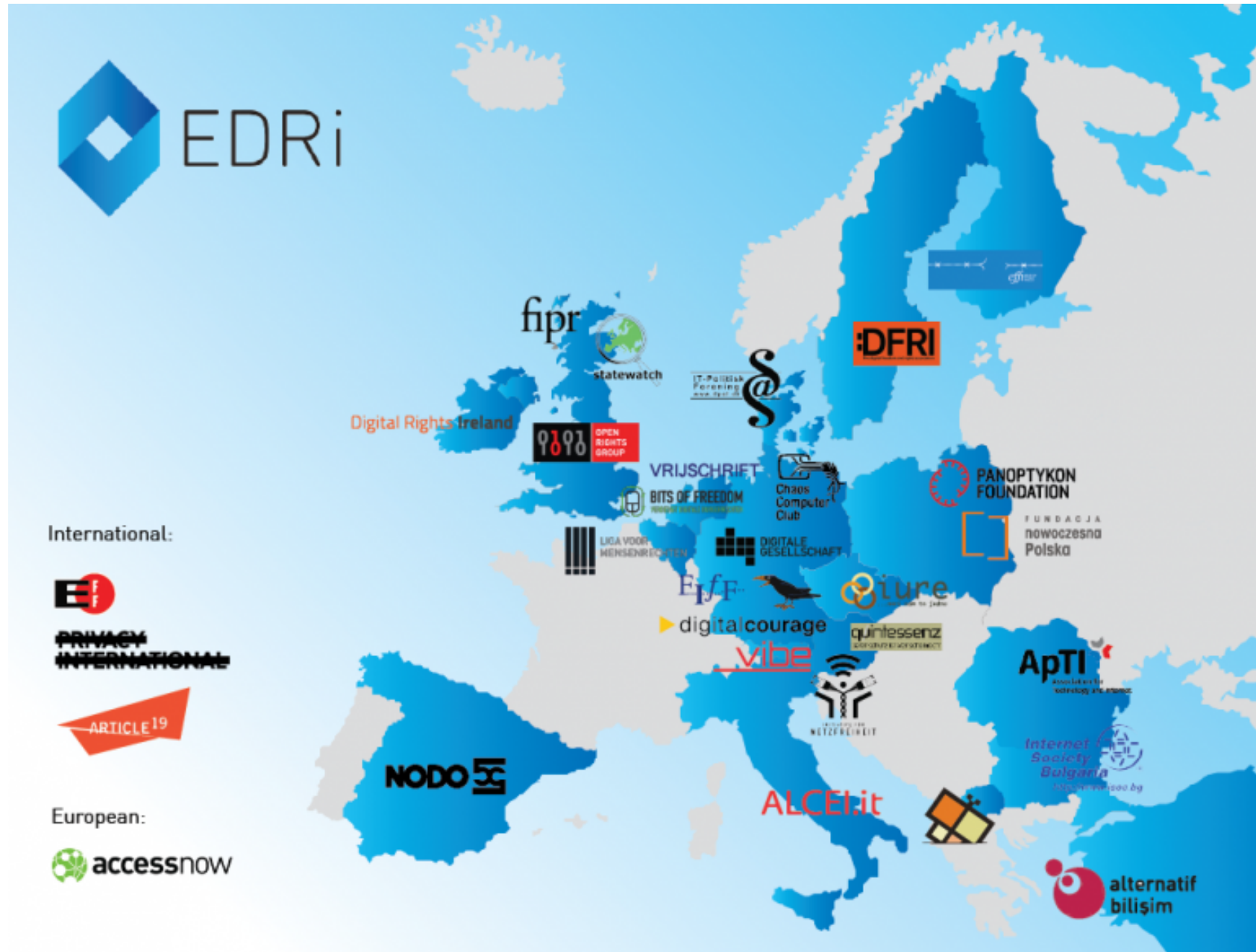
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## ***Track or be tracked? The challenges of the ePrivacy Regulation***

Check this presentation at: <https://edri.org/diego/>

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**European Digital Rights (EDRi)** is an association of civil and human rights organisations from across Europe.  
**We defend rights and freedoms in the digital environment.**



# **(some) Human Rights frameworks**

## **UN Declaration of human rights:**

- Article 12: No one shall be subjected to arbitrary interference with his privacy,** family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

## **EU Charter of Fundamental Rights**

- Article 7: Respect for private and family life**
- Article 8: Protection of personal data**

# EU Rules on Data Protection & Privacy

## Existing:

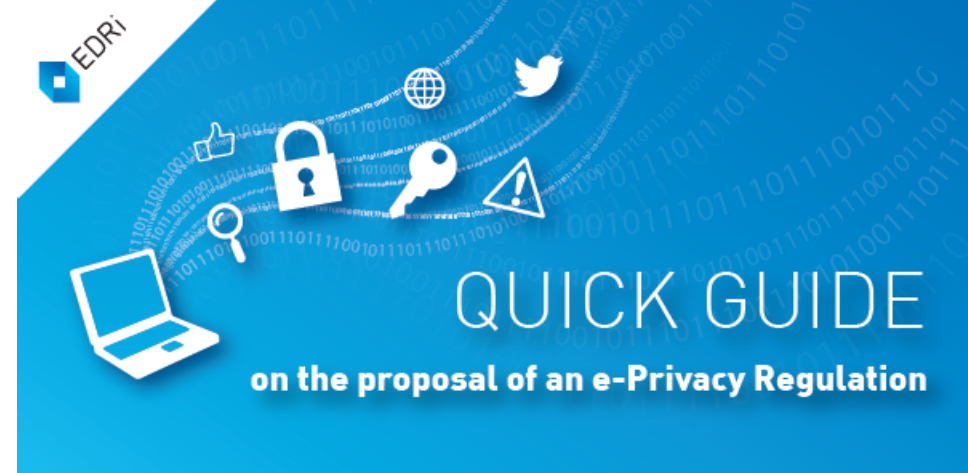
- Data Protection Directive (1995)
- “Police Directive” (1995)
- ePrivacy Directive (2002)

## To be replaced respectively by

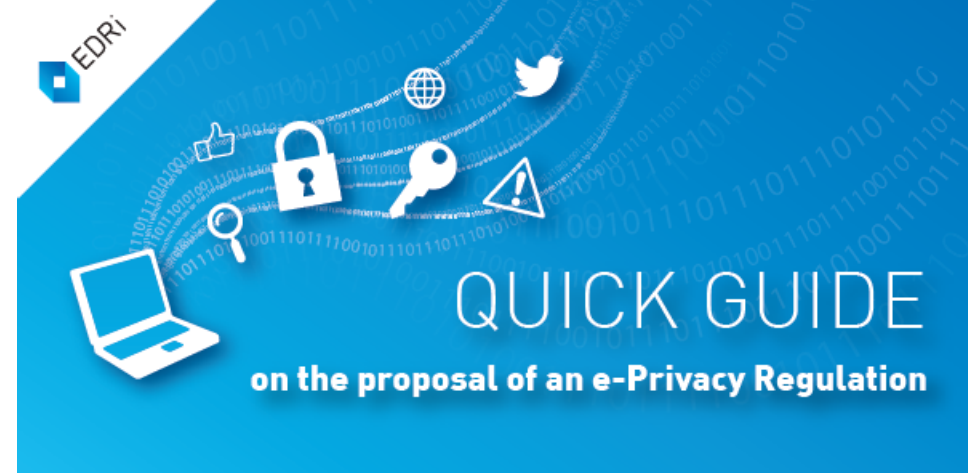
- General Data Protection Regulation – **GDPR** (passed in 2016, in force from May 2018)
- New “Police Directive” (passed in 2016, in force from May 2018)
- ePrivacy Regulation (ongoing, expected for 2018)

# future ePrivacy Regulation

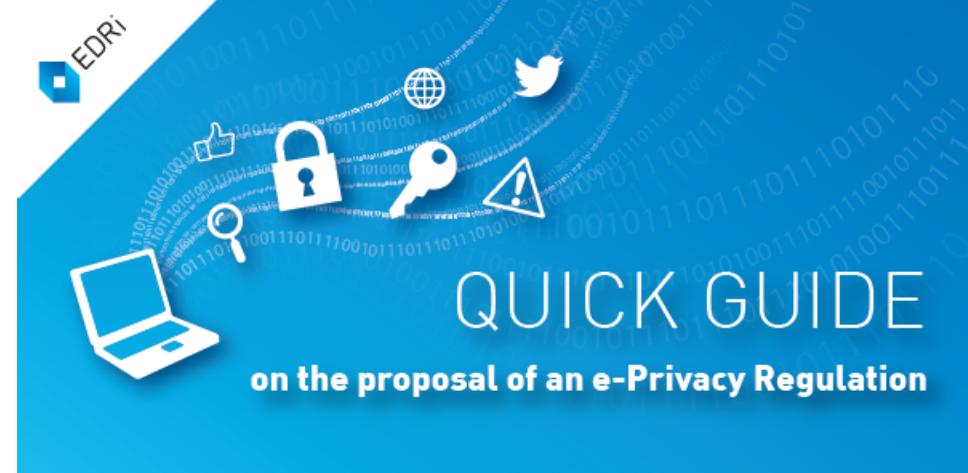




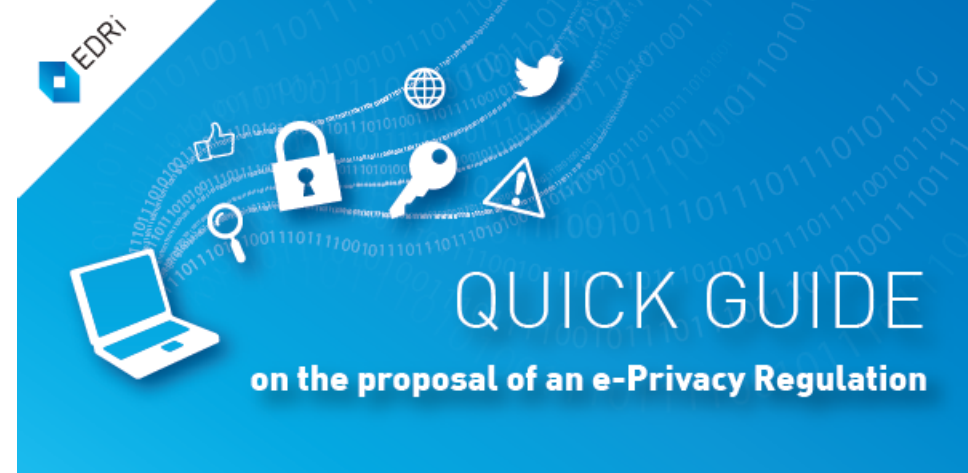
- The e-Privacy Directive was created to complement the Data Protection Directive
- It covers **specifically privacy, confidentiality of communications and data protection issues in the electronic communications sector.**



- The European Commission **published** a proposal in January 2017.
- **The proposal is a good step forward** but it has been watered down after the leak of the text in December.
- Civil society and industry lobbyists are already in passionate discussions about the text: **“End of the Internet as we know it!”**



- **Telecoms, Online advertisers, Publishers:**  
“We don’t need more regulation, we need to use Big Data and profiling to create jobs and innovation”
- **Some policy makers** “We like innovation and data flows and stuff!!!!”
- **European Commission:** “We understand we need to protect privacy and confidentiality of communications. Help us out!”



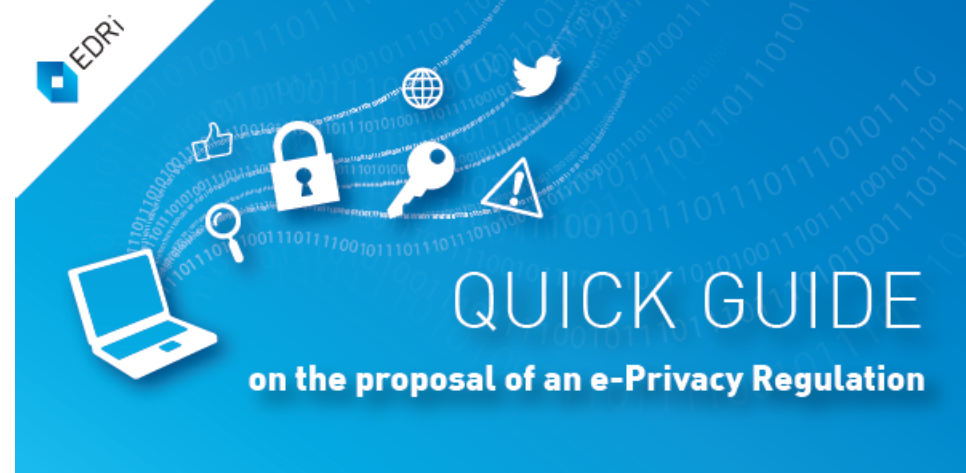
## EDRi thinks that...

- We need ePrivacy to complement the GDPR in the era of the Internet of Things, massive surveillance and more and more e-communications
- It needs to be harmonised across the EU
- It is not about annoying cookie notices, it is about privacy and confidentiality of communications
- Some telecoms just want to profile citizens to compete with other Big Data businesses
- Watchout: Governments ♥ Backdoors (ie: exceptions for “national security”)



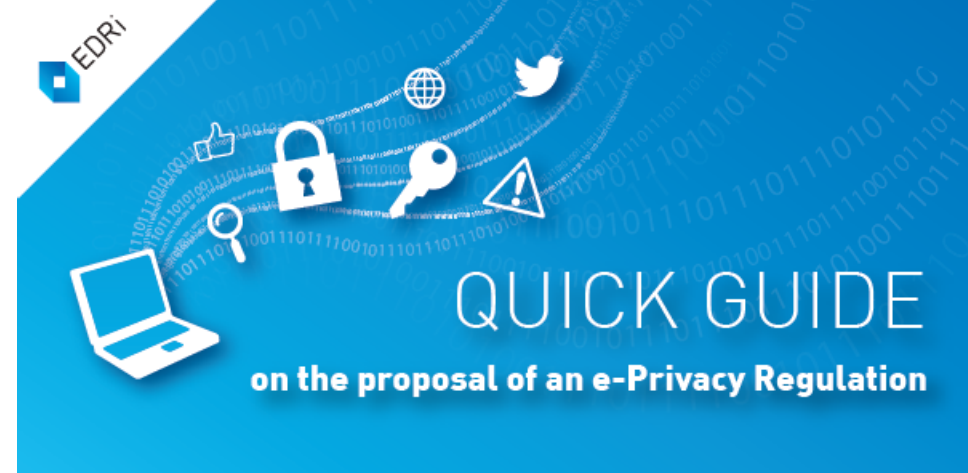
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## and specifically...

- **Trust is needed:** NTIA report **showed** that 45% of households had refrained from certain online activities in the previous year, due to privacy and security fears
- **Broadening of the scope** to other new actors, such as **OTTs** (Skype, Whatsapp as common methods of communications)
- Keep the focus on **tracking**, rather than on specific tools (cookies, device fingerprinting)
- We need a **ban on “cookie walls”** for private and public websites
- **Privacy by default**, not “privacy by option”
- **Collective redress** needs to be ensured



## Blurry issues:

- Article from the ePR allowing **data retention** laws: repeal or clarify?
- **OTTs** using end-to-end encryption in apps: Is it dangerous or positive for privacy to include them in the new ePR?
- **Alternatives to "free" services** if people don't want to pay for them (as EU research shows)
- **Encryption backdoors** and "needed access" for law enforcement purposes

Questions, comments?

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