

LEGITIMATE INTEREST



WHAT IS “LEGITIMATE INTEREST”?

“Legitimate interest” is a legal basis for using **non-sensitive** personal data in certain circumstances, without consent.

Communications data (your emails, calls over the internet, chats...) must be treated as **sensitive** data, both logically and following the case law of the Court of Justice of the European Union. As the “legitimate interest” exception allows only the use of non-sensitive data, communication data cannot, logically and legally, be processed under this exception.

The “legitimate interest” exception (in the General Data Protection Regulation, GDPR) is generally used in circumstances such as incidental re-use of data by companies for the provision of services. This kind of circumstances do not arise with regard to sensitive communications data.

WHY IS THIS IMPORTANT?

Adding a “legitimate interest” exception in the e-Privacy Regulation would contradict the approach taken over the past 15 years in the European Union. It would contradict the [Tele2 ruling](#) of Court of Justice, that ruled that communications data must be considered to be sensitive. Following the logic of that ruling, companies should in no circumstances be allowed, without specific permission, to monetise or otherwise exploit sensitive communications.

WHAT SHOULD THE E-PRIVACY SAY ABOUT IT?

Legitimate interest has no place in the e-Privacy Regulation. It would broaden to an unpredictable extent the way that companies (for example, direct marketers) would be allowed to use communications data. Any “legitimate interest” exception would undermine users’ control over their own personal data, and would undermine their freedom of expression by creating the possibility for companies to analyse sensitive private communications without consent.

Do you want to know more? Check out the paper by EDRi member Bits of Freedom [here](#). You can also find more about privacy in our series of blogposts on [“Your privacy, security and freedom online are in danger”](#) and our [Document pool on e-Privacy](#).

