Law | ePrivacy

eP.01 Confidentiality of Communication

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Respect for the confidentiality of one's communications is an essential dimension of the fundamental right of everyone to the respect for private and family life, home and communications (Art. 7 CFR).

Confidentiality of electronic communication means that the information exchanged between the parties is not disclosed to anyone except the parties involved in the communication. The same applies to the external elements of these communications (when? for how long? from where? to whom?), which are also referred to as "closer circumstances of the communication" (German Federal Constitutional Court), "traffic data" (ePrivacy Directive and TKG) or "metadata of the communication" (drafts of the ePrivacy Regulation).

The principle of confidentiality should apply to current and future means of communication, including calls, internet access, messenger, e-mail, internet phone calls and personal messaging provided through social media.

Confidentiality of communications and data protection overlap to some extent, but are not identical. In particular, the right to confidentiality of communications is not a "manifestation" of data protection, but follows other dogmatic principles:

- Data protection is "supra-general protection" because it is linked to the existence of personal data. "eprivacy" is "sphere protection" because it protects only the sphere of electronic communication.

- Privacy protects only natural persons. "eprivacy" protects the confidentiality of communication itself, i.e., also data of legal persons and content data if they are anonymized.

- Data protection cannot (and should not) guarantee the absolute confidentiality of certain information, as is required, for example, by the protection of secrets (e.g., medical secrecy or secrecy of mandate). Therefore, balancing of interests is characteristic for data protection, whereas "eprivacy" aims at absolute sphere protection.