

AMENDMENT 58

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

Report**A6-0365/2005****Alexander Nuno Alvaro**

Data retention

Proposal for a directive (COM(2005)0438 – C6-0293/2005 – 2005/0182(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 58
RECITAL 14

(14) Technologies relating to electronic communications are changing rapidly and the legitimate requirements of the competent authorities may evolve; to *advise* on these matters the Commission *envisages* to *create a platform* composed of *representatives of the* law enforcement authorities, associations of the electronic communications industry and data protection authorities.

(14) Technologies relating to electronic communications are changing rapidly and the legitimate requirements of the competent authorities may evolve; to *obtain advice and encourage the sharing of experience of best practice* on these matters the Commission *intends* to *establish a group* composed of *Member States'* law enforcement authorities, associations of the electronic communications industry, *European Parliament representatives* and data protection authorities, *including the European Data Protection Supervisor*.

Or. en

AMENDMENT 59

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Proposal for a directive (COM(2005)0438 – C6-0293/2005 – 2005/0182(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 59
RECITAL 15 a (new)

(15a) It should also be recalled that the obligations incumbent on service providers concerning measures to ensure data quality which derive from Article 6 of Directive 95/46/EC as well as their obligations concerning measures to ensure confidentiality and security of processing of data which derive from Articles 16 and 17 of Directive 95/46/EC, are fully applicable to data being retained within the meaning of the present Directive.

Or. en

AMENDMENT 60

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Text proposed by the Commission

Amendment by Parliament

Amendment 60
RECITAL 16

(16) It is essential that Member States provide legislative measures to ensure that data retained under this Directive are only provided to the competent national authorities in accordance with national legislation in full respect of the fundamental rights of the persons concerned; *such measures include in particular appropriate conditions, limits and safeguards in order to ensure the conformity of the provision of the data retained with fundamental rights as guaranteed in particular in the European Convention for the Protection of Human Rights and Fundamental freedoms.*

(16) It is essential that Member States provide legislative measure to ensure that data retained under this Directive are only provided to the competent national authorities in accordance with national legislation in full respect of the fundamental rights of the persons concerned.

Or. en

AMENDMENT 61

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Text proposed by the Commission

Amendment by Parliament

Amendment 61
RECITAL 16 a (new)

(16a) In this context, it should be recalled that Article 24 of Directive 95/46/EC imposes an obligation on Member States to sanction infringements of the provisions adopted pursuant to Directive 95/46/EC; Article 15(2) of Directive 2002/58/EC imposes the same requirement in relation to national provisions adopted pursuant to Directive 2002/58/EC; Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems provides that the intentional illegal access to information systems, including to data retained therein, shall be made punishable as a criminal offence.

Or. en

AMENDMENT 62

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Text proposed by the Commission

Amendment by Parliament

Amendment 62
RECITAL 16 b (new)

(16b) It should be borne in mind that the right of any person who has suffered damage as a result of an unlawful processing operation or of any act incompatible with national provisions adopted pursuant to Directive 95/46/EC, to receive compensation, which derives from Article 23 of Directive 95/46/EC, applies also in relation to the unlawful processing of any personal data pursuant to the present Directive.

Or. en

AMENDMENT 63

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Text proposed by the Commission

Amendment by Parliament

Amendment 63
RECITAL 17

(17) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

deleted

Or. en

AMENDMENT 64

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Text proposed by the Commission

Amendment by Parliament

Amendment 64
RECITAL 17 a (new)

(17a) It should be borne in mind that the 2001 Council of Europe Convention on Cybercrime as well as the 1981 Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data also cover data being retained within the meaning of the present Directive.

Or. en

AMENDMENT 65

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Text proposed by the Commission

Amendment by Parliament

Amendment 65
RECITAL 18

(18) The objectives of the action to be taken, namely to harmonise the obligations on providers to retain certain data and to ensure that these data are available for the purpose of the *prevention*, investigation, detection and prosecution of serious *criminal offences, such as terrorism and organised crime*, cannot be sufficiently achieved by the Member States and can, by reason of the scale and effects of the action, be better achieved at Community level. Therefore the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(18) The objectives of the action to be taken, namely to harmonise the obligations on providers to retain certain data and to ensure that these data are available for the purpose of the investigation, detection and prosecution of serious *crime as defined by each Member State in national law*, cannot be sufficiently achieved by the Member States and can, by reason of the scale and effects of the action, be better achieved at Community level. Therefore the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Or. en

AMENDMENT 66

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Text proposed by the Commission

Amendment by Parliament

Amendment 66
RECITAL 19 a (new)

(19a) Considering that the obligations on providers of electronic communications services should be proportionate, the Directive requires that they only retain such data which are generated or processed in the process of supplying their communications services; to the extent that such data is not generated or processed by those providers, there can be no obligation to retain it. This Directive is not intended to harmonise the technology for retaining data, the choice of which will be a matter to be resolved at national level.

Or. en

AMENDMENT 67

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Text proposed by the Commission

Amendment by Parliament

Amendment 67
RECITAL 19 b (new)

(19b) It should be remembered that Paragraph 34 of the Inter-institutional agreement on better law-making¹ states that the Council "will encourage the Member States to draw up, for themselves and in the interests of the community, their own tables which will, as far as possible, illustrate the correlation between directives and the transposition measures and to make them public".

¹ OJ C 321, 31.12.2003.

Or. en

AMENDMENT 68

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Text proposed by the Commission

Amendment by Parliament

Amendment 68
RECITAL 19 c (new)

(19c) The present Directive is without prejudice to the power of Member States to adopt legislative measure concerning the right of access to and use of data by national authorities as designated by them. Issues of access to data retained pursuant to this Directive by national public authorities for such activities as are referred to in the first indent of Article 3(2) of Directive 95/46/EC fall outside the scope of Community law. However, they may be the subject of national law, or action pursuant to Title VI of the Treaty on European Union, always noting that such laws or action must fully respect fundamental rights as they result from the common constitutional traditions of the Member States and as they are guaranteed by the ECHR. Article 8 ECHR, as interpreted by the European Court of Human Rights, requires that interference by public authorities with privacy rights must respond to requirements of necessity and proportionality and must therefore serve specific, explicit and legitimate purposes and be exercised in a manner which is adequate, relevant and not excessive in relation to the purpose of the

interference.

Or. en

AMENDMENT 69

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

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Text proposed by the Commission

Amendment by Parliament

Amendment 69
ARTICLE 1, PARAGRAPH 1

1. This Directive aims to harmonise the provisions of the Member States concerning obligations on the providers of publicly available electronic communications services or of a public communications network with respect to the ***processing and*** retention of certain data, in order to ensure that the data ***is*** available for the purpose of the ***prevention***, investigation, detection and prosecution of serious ***criminal offences, such as terrorism and organised crime.***

1. This Directive aims to harmonise the provisions of the Member States concerning obligations on the providers of publicly available electronic communications services or of a public communications network with respect to the retention of certain data ***which are generated or processed by them***, in order to ensure that the data ***are*** available for the purpose of the investigation, detection and prosecution of serious ***crime, as defined by each Member State in its national law.***

Or. en

7.12.2005

A6-0365/70

AMENDMENT 70

by Martine Roure and Wolfgang Kreissl-Dörfler, on behalf of the PSE Group, Ewa Klamt and Herbert Reul, on behalf of the PPE-DE Group

Report

A6-0365/2005

Alexander Nuno Alvaro

Data retention

Proposal for a directive (COM(2005)0438 – C6-0293/2005 – 2005/0182(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 70

ARTICLE 2, PARAGRAPH 2, POINT B A (new)

(ba) "telephone service" means calls (including voice, voicemail, conference or data), supplementary services (including call forwarding and call transfer), messaging and multi-media services (including Short Message Services, Enhanced Media Services and Multi-Media Services).

Or. en