

AMENDMENT 82

by Martine Roure, 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 82
ARTICLE 7 a (new)

*Article 7a**Data protection and data security*

Without prejudice to the provisions adopted pursuant to Directive 95/46/EC and Directive 2002/58/EC, each Member State shall ensure that providers of publicly available electronic communications services or of a public communications network respect, as a minimum, the following data security principles with respect to data retained in accordance with the present Directive:

(a) the retained data shall be of the same quality and shall be subject to the same security and protection as those data on the network;

(b) the data shall be subject to appropriate technical and organisational measures to protect the data against accidental or unlawful destruction, or accidental loss or alteration, unauthorised or unlawful storage, processing, access or disclosure;

(c) the data shall be subject to appropriate technical and organisational measures to ensure that access to the data is undertaken only by specially authorised personnel; and

(d) the data shall be destroyed at the end of the period for retention except those data which have been accessed and preserved.

Or. en

AMENDMENT 83

by Martine Roure, 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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Amendment by Parliament

Amendment 83
ARTICLE 8

Member States shall ensure that the data are retained in accordance with this Directive in such a way that the data retained and any other necessary information related to such data can be transmitted upon request to the competent authorities without undue delay.

Member States shall ensure that the data *as specified in Article 4* are retained in accordance with this Directive in such a way that the data retained and any other necessary information related to such data can be transmitted upon request to the competent authorities without undue delay.

Or. en

AMENDMENT 84

by Martine Roure, 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 84
ARTICLE 8 a (new)

*Article 8a**Supervisory authority*

1. Each Member State shall designate one or more public authorities to be responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to Article 7a of this Directive regarding the security of the stored data. These authorities may be same authorities as those referred to in Article 28 of Directive 95/46/EC.

2. These authorities shall act with complete independence in exercising the functions referred to in paragraph 1.

Or. en

AMENDMENT 85

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Text proposed by the Commission

Amendment by Parliament

Amendment 85
ARTICLE 10

*Article 10**deleted**Costs*

Member States shall ensure that providers of publicly available electronic communication services or of a public communication network are reimbursed for demonstrated additional costs they have incurred in order to comply with obligations imposed on them as a consequence of this Directive.

Or. en

AMENDMENT 86

by Martine Roure, 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 86

ARTICLE 11

Article 15, paragraph 1a (Directive 2002/58/EC)

1a. Paragraph 1 *shall* not apply to *obligations relating to the retention of data for the prevention, investigation, detection and prosecution of serious criminal offences, such as terrorism and organised crime, deriving from Directive 2005/./EC.*

1a. Paragraph 1 *does* not apply to *data specifically required to be retained by Directive 2005/./EC for the purposes referred to in Article 1(1) of that Directive.*

Or. en

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Amendment by Parliament

Amendment 87
ARTICLE 11 a (new)

*Article 11a**Future measures*

1. A Member State facing particular circumstances warranting an extension for a limited period of the maximum retention period referred to in Article 7 may take the necessary measures. The Member State shall immediately notify the Commission and inform the other Member States of the measures taken by virtue of this Article and indicate the grounds for introducing them.

2. The Commission shall, within six months after the notification as referred to in paragraph 1, approve or reject the national measures involved after having verified whether or not they are a means of arbitrary discrimination or disguised restriction of trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market. In the absence of a decision by the Commission within this period the national measures shall be deemed to have been approved.

3. When, pursuant to paragraph 2, the national measures of a Member State

derogating from the provisions of this Directive are approved, the Commission may examine whether to propose an adaptation of this Directive.

Or. en

AMENDMENT 88

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Text proposed by the Commission

Amendment by Parliament

Amendment 88
ARTICLE 11 b (new)

*Article 11b**Remedies, liability and sanctions*

1. Each Member State shall take the necessary measures to ensure that the national measures implementing Chapter III of Directive 95/46/EC providing for judicial remedies, liability and sanctions are fully implemented with respect to the processing of data under this Directive.

2. Each Member State shall in particular take the necessary measures to ensure that the intentional access to or transfer of data retained in accordance with the present Directive which is not permitted under national law adopted pursuant to this Directive, shall be punishable by sanctions, including administrative or criminal sanctions, which are effective, proportionate and dissuasive.

Or. en

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Text proposed by the Commission

Amendment by Parliament

Amendment 89

ARTICLE 12, PARAGRAPH 1

1. Not later than three years from the date referred to in Article 13(1), the Commission shall submit to the European Parliament and the Council an evaluation of the application of this Directive and its impact on economic operators and consumers, taking into account the statistical elements provided to the Commission pursuant to Article 9 with a view to determining whether it is necessary to modify the provisions of this Directive, in particular with regard to the *period* of retention provided for in Article 7.

1. Not later than three years from the date referred to in Article 13(1), the Commission shall submit to the European Parliament and the Council an evaluation of the application of this Directive and its impact on economic operators and consumers, taking into account *further developments in electronic communications technology and* the statistical elements provided to the Commission pursuant to Article 9 with a view to determining whether it is necessary to modify the provisions of this Directive, in particular with regard to the *list of data in Article 4, and the periods* of retention provided for in Article 7. *The results of the evaluation will be made publicly available.*

Or. en

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Text proposed by the Commission

Amendment by Parliament

Amendment 90

ARTICLE 13, PARAGRAPH 1, SUBPARAGRAPH 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by *[no later than **15 months** after its adoption at the latest]*. They shall forthwith communicate to the Commission the text of those provisions *and a correlation table between those provisions and this Directive*.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by no later than **18 months** after its adoption at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Or. en

AMENDMENT 91

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Text proposed by the Commission

Amendment by Parliament

Amendment 91

ARTICLE 13, PARAGRAPH 2 a (new)

2a. Each Member State may for a period of up to 18 months from the expiry of the deadline referred to in paragraph 1 defer application of this Directive to the retention of communications data relating to Internet Access, Internet telephony and Internet e-mail. Any Member State which intends to make use of this paragraph shall, by way of a declaration, notify the Commission to that effect upon adoption of this Directive. The declaration shall be published in the Official Journal of the European Union.

Or. en

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Text proposed by the Commission

Amendment by Parliament

Amendment 92

ANNEX

*Annex**deleted*

Types of data to be retained under the categories identified in Article 4 of this Directive:

a) Data necessary to trace and identify the source of a communication:

(1) Concerning Fixed Network Telephony:

(a) The calling telephone number;

(b) Name and address of the subscriber or registered user;

(2) Concerning Mobile Telephony:

(a) The calling telephone number;

(b) Name and Address of the subscriber or registered user;

(3) Concerning Internet Access, Internet e-mail and Internet telephony:

(a) The Internet Protocol (IP) address, whether dynamic or static, allocated by the Internet access provider to a communication;

(b) Name(s) and address(es) of the subscriber(s) or registered user(s) who are the intended recipient(s) of the

communication.

c) Data necessary to identify the date, time and duration of a communication:

(1) Concerning Fixed Network Telephony and Mobile Telephony:

(a) The date and time of the start and end of the communication.

(2) Concerning Internet Access, Internet e-mail and Internet telephony:

(a) The date and time of the log-in and log-off of the Internet sessions based on a certain time zone.

d) Data necessary to identify the type of communication:

(1) Concerning Fixed Network Telephony:

(a) The telephone service used, e.g. voice, conference call, fax and messaging services.

(2) Concerning Mobile Telephony:

(a) The telephone service used, e.g. voice, conference call, Short Message Service, Enhanced Media Service or Multi-Media Service

e) Data necessary to identify the communication device or what purports to be the communication device:

(1) Concerning Mobile Telephony:

(a) The International Mobile Subscriber Identity (IMSI) of the calling and called party;

(b) The International Mobile Equipment Identity (IMEI) of the calling and called party.

(2) Concerning Internet Access, Internet e-mail and Internet telephony:

(a) The calling telephone number for dial-up access;

(b) The digital subscriber line (DSL) or other end point identifier of the originator

of the communication;

(c) The media access control (MAC) address or other machine identifier of the originator of the communication.

f) Data necessary to identify the location of mobile communication equipment:

(1) The location label (Cell ID) at the start and end of the communication;

(2) Data mapping between Cell IDs and their geographical location at the start and end of the communication.

Or. en