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RAPPORT

dwar il-proposta għal Direttiva tal-Parlament Ewropew u tal-Kunsill dwar iż-żamma ta' dejta pproċessata b'konnessjoni mal-provvista ta' servizzi pubblici ta' kommunikazzjoni elettronika u li temenda d-Direttiva 2002/58/EC (COM(2005)0438 – C6-0293/2005 – 2005/0182(COD))

Kumitat għal-Libertajiet Ċivili, il-Ġustizzja u l-Intern

Rapporteur: Alexander Nuno Alvaro

Tifsira tas-simboli użati

- * Proċedura ta' konsultazzjoni
maġgoranza tal-voti mitfugħha
- **I Proċedura ta' koperazzjoni (l-ewwel qari)
maġgoranza tal-voti mitfugħha
- **II Proċedura ta' koperazzjoni (it-tieni qari)
maġgoranza tal-voti mitfugħha biex japprova il-pożizzjoni komunimaġġoranza tal-Membri komponenti tal-Parlament biex jirrifutaw jew jemendaw il-pożizzjoni komuni
- *** Proċedura ta' kunsens
maġgoranza tal-Membri komponenti tal-Parlament, barra kažijiet koperti mill-Artikoli 105, 107, 161 u 300 tat-Trattat KE u Artikolu 7 tat-Trattat ta' l-UE
- ***I Proċedura ta' kodeċiżjoni (l-ewwel qari)
maġgoranza tal-voti mitfugħha
- ***II Proċedura ta' kodeċiżjoni (it-tieni qari)
maġgoranza tal-voti mitfugħha biex japprova il-pożizzjoni komunimaġġoranza tal-Membri komponenti tal-Parlament biex jirrifutaw jew jemendaw il-pożizzjoni komuni
- ***III Proċedura ta' kodeċiżjoni (it-tielet qari)
maġgoranza tal-voti mitfugħha biex japprova it-test kongunt

(Dan it-tip ta' proċedura jiddependi mill-baži legali proposta mill-Kummissjoni.)

Emendi għal test leġiżlattiv

Fl-emendi li jsiru mill-Parlament, it-test emendat huwa indikat b'tipa ***qawwija korsiva***. Test *korsiv normali* huwa indikazzjoni għas-servizzi tekniċi li turi partijiet tat-test leġiżlattiv li ghalihom qed tkun proposta korrezzjoni bl-iskop li tghin fil-preparazzjoni tat-test finali (pereżempju, żbalji ovvji jew nuqqasijiet f'verzjoni lingwistika minnhom). Il-korrezzjonijiet proposti huma suġġetti ghall-qbil tas-servizzi tekniċi involuti.

WERREJ

Paġna

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ABBOZZ TA' RIŽOLUZZJONI LEGIŽLATTIVA TAL-PARLAMENT EWROPEW

dwar il-proposta għal Direttiva tal-Parlament Ewropew u tal-Kunsill dwar iż-żamma ta' dejta pproċessata b'konnessjoni mal-provvista ta' servizzi pubbliċi ta' kommunikazzjoni elettronika u li temenda d-Direttiva 2002/58/EC
(COM(2005)0438 – C6-0293/2005 – 2005/0182(COD))

(Proċedura ta' kodeċiżjoni: l-ewwel qari)

Il-Parlament Ewropew,

- wara li kkunsidra l-proposta tal-Kummissjoni lill-Parlament Ewropew u lill-Kunsill (COM(2005)0438)¹
 - wara li kkunsidra l-Artikolu 251(2) u l-Artikolu 95 tat-Trattat KE, skond liema artikolu l-Kummissjoni ppreżentat il-proposta lill-Parlament (C6-0293/2005),
 - wara li kkunsidra l-Artikolu 51 tar-Regoli ta' Proċedura tiegħu,
 - wara li kkunsidra r-rapport tal-Kumitat għal-Libertajiet Ċivili, il-Ġustizzja u l-Intern u l-opinjonijiet tal-Kumitat ghall-Industrija, ir-Ričerka u l-Energija u l-Kumitat għas-Suq Intern u l-Ħarsien tal-Konsumatur (A6-0365/2005)
1. Japprova l-proposta tal-Kummissjoni kif emendata;
 2. jitlob lill-Kummissjoni, qabel id-dħul fis-sehh ta' din id-Direttiva, li tordna studju dwar l-impatt, magħmul minn korp indipendenti li jirrappreżenta l-partecipanti kollha, li jkɔpri kull ma hu relatav mas-suq intern u mal-ħarsien tal-konsumatur;
 3. Jitlob lill-Kummissjoni sabiex terġa' tirreferi l-kwistjoni lill-Parlament jekk għandha l-ħsieb li temenda l-proposta b'mod sustanzjali jew li tibdilha b'test ieħor;
 4. Jagħti istruzzjonijiet lill-President tiegħu sabiex jghaddi l-pożizzjoni tal-Parlament lill-Kunsill u lill-Kummissjoni.

Test propost mill-Kummissjoni

Emendi tal-Parlament

Emenda 1
PREMESSA 3

L-Artikoli 5, 6 u 9 tad-Direttiva 2002/58/KE jiddefinixxu r-regoli applikabbi għall-iproċessar, mill-fornituri ta' netwerks u servizzi, ta' *data* dwar it-traffiku u l-lok iġġenerata bl-użu ta' servizzi ta'

L-Artikoli 6 u 9 tad-Direttiva 2002/58/KE jiddefinixxu r-regoli applikabbi għall-iproċessar, mill-fornituri ta' netwerks u servizzi, ta' *dejta* dwar it-traffiku u l-lok iġġenerata bl-użu ta' servizzi ta'

¹ GU C, ..., p.

komunikazzjoni elettronika. *Data ta' dan it-tip għandha tiġi mħassra jew issir anonima meta ma tibqax meħtiega għal skopijiet ta' trażmissjoni ta' komunikazzjoni. Ladarba d-data ma tibqax meħtiega għal skopijiet ta' trażmissjoni ta' komunikazzjoni, hlief meta tkun neċċessarja għall-kontijiet jew ghall-ħlas ta' l-interkonnessjoni, din id-data għandha tithassar jew issir anonima. Anke jekk bil-kunsens, certa data tista' tkun ipproċessata wkoll għal skopijiet ta' kummerċjalizzazzjoni u forniment ta' servizzi b'valur miżjud;*

komunikazzjoni elettronika. Fil-prinċipju, dejta ta' dan it-tip għandha tiġi mħassra jew issir anonima meta ma tibqax meħtiega għal skopijiet ta' trażmissjoni ta' komunikazzjoni. *Għal skopijiet ta' ħlas ta' kontijiet ta' abbonament u ghall-ħlas ta' interkonnessjoni, id-dejta tista' tiġi pproċessata, iżda dan jista' jsir biss sat-tmiem tal-perjodu li matulu tista' ssir ogħżejjoni għall-kont legalment jew jista' jsir il-ħlas;*

Emenda 2 PREMESSA 4

(4) L-Artikolu 15 (1) tad-Direttiva 2002/58/KE jelenka l-kundizzjonijiet li taħthom l-Istati Membri jistgħu jirrestringu l-ambitu tad-drittijiet u l-obbligi msemmija fl-Artikoli 5, 6, 8(1)(2)(3) u (4), u 9 tad-Direttiva; kull deroga ta' dan it-tip trid tkun neċċessarja, xierqa u proporzjonata fi ħdan soċjetà demokratika għal skopijiet specifiċi ta' ordni pubbliku, jiġifieri biex tiġi salvagwardjata d-difīża tas-sigurtà nazzjonali (i.e. is-sigurtà ta' l-Istat), is-sigurtà pubblika jew il-prevenzjoni, l-investigazzjoni, is-sejba u l-prosekuzzjoni ta' reati kriminali *jew ta' użu mhux awtorizzat ta' sistemi ta' komunikazzjoni elettronika.*

(4) L-Artikolu 15 (1) tad-Direttiva 2002/58/KE jelenka l-kundizzjonijiet li taħthom l-Istati Membri jistgħu jirrestringu l-ambitu tad-drittijiet u l-obbligi msemmija fl-Artikoli 5, 6, 8(1)(2)(3) u (4), u 9 tad-Direttiva; kull deroga ta' dan it-tip trid tkun neċċessarja, xierqa u proporzjonata fi ħdan soċjetà demokratika għal skopijiet specifiċi ta' ordni pubbliku, jiġifieri biex tiġi salvagwardjata d-difīża tas-sigurtà nazzjonali (i.e. is-sigurtà ta' l-Istat), is-sigurtà pubblika jew l-investigazzjoni, is-sejba u l-prosekuzzjoni ta' reati kriminali *serji.*

L-ewwel parti ta' l-emenda li tikkancella "prevenzjoni" tapplika tul it-test kollu. L-adozzjoni tagħha toħloq il-bżonn li jsiru l-bidliet korrispondenti fit-test kollu).

Emenda 3 PREMESSA 4 A (ġidida)

*(4a) L-Artikolu 7 tal-Karta tad-Drittijiet
Fundamentali jirrikonoxxi b'mod esplicitu
id-dritt għar-rispett tal-hajja privata u l-
Artikolu 8 ta' l-istess dokument
jirrikonoxxi d-dritt ghall-protezzjoni ta'
dejta personali.*

Emenda 4
PREMESSA 6

(6) The legal and technical differences *between national provisions concerning the retention of data for the purpose of prevention, investigation, detection and prosecution of criminal offences present obstacles to the internal market for electronic communications; service providers are faced with different requirements regarding the types of traffic data to be retained as well as the conditions and the periods of retention.*

Id-differenzi legali u tekniċi *bejn id-dispożizzjonijiet nazzjonali rigward iż-żamma ta' data għal skopijiet ta' prevenzjoni, investigazzjoni, sejba u prosekuzzjoni ta' reati kriminali jipprezentaw ostakli lis-suq intern tal-komunikazzjonijiet elettroniċi; il-fornituri tas-servizzi jridu jkunu konformi ma' rekwiziti differenti rigward it-tipi ta' data dwar it-traffiku li għandha tinżamm kif ukoll rigward il-kundizzjonijiet u l-perjodi taż-żamma.*

Id-dispożizzjonijiet li ġew adottati s'issa jippreżentaw differenzi legali u tekniċi u r-rekwiziti rigward it-tipi ta' dejta dwar it-traffiku li għandha tinżamm kif ukoll rigward il-kundizzjonijiet u l-perjodi taż-żamma huma wkoll differenti.

Emenda 5
PREMESSA 6 A (ġidida)

L-armonizzazzjoni tas-suq intern fil-qasam taż-żamma tad-dejta turi biċ-ċar il-htiega li ċ-ċittadini madwar l-Ewropa jkollhom aċċess ahjar u iktar ugwali ghall-ġustizzja u ghall-appell. Kull čittadin għandu jkollu l-istess dritt ghall-protezzjoni legali u ghall-kumpens kontra l-użu mhux xieraq ta' informazzjoni, kemm jekk dan isir minn

awtorità kif ukoll minn fornitur.

Emenda 6
PREMESSA 7

*Il-Konklużjonijiet tal-Kunsill tal-Ġustizzja u l-Intern ta' l-20 ta' Settembru 2001
isejħu biex ikun aċċertat li l-awtoritajiet ta' l-infurzar tal-ligi jkunu jistgħu jinvestigaw atti kriminali li jinvolvu l-użu ta' komunikazzjoni elettronika u li jieħdu mizuri legali kontra min iwettaq dawn ir-reati, filwaqt li jinstab bilanċ bejn il-protezzjoni tad-data personali u l-ħtieġa ta' l-awtoritajiet ta' l-infurzar tal-ligi li jkollhom aċċess għal data minħabba ragunijiet ta' investigazzjoni kriminali;*

Imħassar

Emenda 7
PREMESSA 8

Il-Konklużjonijiet tal-Kunsill tal-Ġustizzja u l-Intern tad-19 ta' Dicembru 2002 isostnu li, minħabba ż-żieda sinifikanti fil-possibiltajiet ta' komunikazzjoni elettronika, id-data rigward l-użu ta' komumikazzjonijiet elettronika hija partikolarmen importanti u għaldaqstant ghodda prezjuža fil-prevenzjoni, l-investigazzjoni, is-sejba u l-prosekuzzjoni ta' reati kriminali, partikolarmen kontra l-kriminalità organizzata;

Il-Konklużjonijiet tal-Kunsill tal-Ġustizzja u l-Intern tad-19 ta' Dicembru 2002 isostnu li, minħabba ż-żieda sinifikanti fil-possibiltajiet ta' komunikazzjoni elettronika, id-dejta rigward l-użu ta' komumikazzjonijiet elettronika hija partikolarmen importanti u għaldaqstant ghodda prezjuža fil-prevenzjoni, l-investigazzjoni, is-sejba u l-prosekuzzjoni ta' reati kriminali, partikolarmen kontra l-kriminalità organizzata;

Amendment 8
RECITAL 10

Id-dikjarazzjoni adottata mill-Kunsill informali specjali tat-13 ta' Lulju 2005 issaħħaħ il-bżonn li, kemm jiista' jkun malajr, jiġu adottati miżuri li għandhom x'jaqsmu maż-żamma ta' data dwar it-traffiku tal-komunikazzjoni elettronika;

Id-dikjarazzjoni adottata mill-Kunsill informali specjali tat-13 ta' Lulju 2005 issaħħaħ il-bżonn li, kemm jiista' jkun malajr, jiġu adottati miżuri li għandhom x'jaqsmu maż-żamma ta' dejta dwar it-traffiku tal-komunikazzjoni elettronika;

Amendment 9
RECITAL 10 A (new)

(10a) Il-Grupp ta' Hidma għall-protezzjoni ta' l-individwi dwar l-ipproċessar ta' dejta personali, li ġiet stabilita skond l-Artikolu 29 tad-Direttiva 95/46/EC hu responsabbi li jwettaq il-funzjonijiet stipulati f'Artikolu 30 tad-Direttiva msemmija hawn fuq, inkluža dik li għandha x'taqsam mal-protezzjoni tad-drittijiet u l-libertajiet fundamentali u ma' l-interessi legittimi fis-settur li jaqa' taħt din id-Direttiva.

Emenda 10
PREMESSA 11

Minħabba l-importanza tad-data dwar it-traffiku għall-prevenzjoni, l-investigazzjoni, is-sejba u l-prosekuzzjoni ta' reati kriminali serji, bħat-terrorizmu u l-kriminalità organizzata, kif muri mir-riċerka u l-esperjenza prattika ta' diversi Stati Membri, hemm il-ħtieġa li jiġi żgurat li d-data li tkun proċessata mill-fornituri tal-komunikazzjoni elettronika waqt li joffru servizzi jew netwerks ta' komunikazzjoni elettronika għall-pubbliku tinżamm għal certu żmien;

(11) L-esperjenza prattika ta' xi Stati Membri wriet li d-dejta dwar it-traffiku tista' tkun importanti għall-investigazzjoni, is-sejba u l-prosekuzzjoni ta' reati kriminali serji, bħat-terrorizmu u l-kriminalità organizzata. Għaldaqstant, hemm il-ħtieġa li jiġi żgurat li d-dejta li tkun proċessata mill-fornituri pubblici tal-komunikazzjoni elettronika waqt li joffru servizzi jew netwerks ta' komunikazzjoni elettronika għall-pubbliku tinżamm għal perjodu ta' żmien armonizzat.

Emenda 11
PREMESSA 11 A (ġdida)

(11a) It-tfassil ta' kwalunkwe listi ta' tipi ta' dejta li għandha tinżamm għandu jirrifletti bilanċ bejn il-benefiċċju għall-investigazzjoni, is-sejba u l-prosekuzzjoni ta' reati kriminali serji u l-grad ta' invażjoni tal-privatezza li se tiġi kkawżaata.

Emenda 12
PREMESSA 14

It-teknoloġiji li għandhom x'jaqsmu mal-

It-teknoloġiji li għandhom x'jaqsmu mal-

komunikazzjonijiet elettroniċi qegħdin jinbidlu malajr u r-rekwiżiti legittimi ta' l-awtoritajiet kompetenti jistgħu jevolvu; biex tagħti pariri dwar dawn il-kwistjonijiet il-Kummissjoni qiegħda taħseb ***li toħlog*** pjattaforma komposta minn rappreżentanti ta' l-awtoritajiet ta' l-infurzar tal-ligi, ta' assoċjazzjonijiet ta' l-industrija tal-komunikazzjoni elettronika u ta' l-awtoritajiet tal-protezzjoni tad-data

komunikazzjonijiet elettroniċi qegħdin jinbidlu malajr u r-rekwiżiti legittimi ta' l-awtoritajiet kompetenti jistgħu jevolvu; biex tagħti pariri dwar dawn il-kwistjonijiet il-Kummissjoni qiegħda taħseb ***biex kultant żmien tirrevedi n-neċċessità assoluta ta' dispozizzjonijiet bħal dawn u biex tevalwa t-tipi ta' dejta li huma meħtieġa***. Pjattaforma komposta minn rappreżentanti tal-**Parlament Ewropew**, ta' l-awtoritajiet ta' l-infurzar tal-ligi, ta' assoċjazzjonijiet ta' l-industrija tal-komunikazzjoni elettronika, ta' ***organizzazzjonijiet ghall-protezzjoni tal-konsumatur*** u ta' l-awtoritajiet ***Ewropej u nazzjonali*** tal-protezzjoni tad-dejta ***jistgħu jassisti lill-Kummissjoni***.

Emenda 13
PREMESSA 17

Il-miżuri meħtieġa ghall-implimentazzjoni ta' din id-Direttiva għandhom ikunu adottati skond id-Deciżjoni tal-Kunsill 1999/468/KE tat-28 ta' Ġunju 1999 li tipprovdi l-proċeduri ghall-eżercizzju tas-setgħat ta' l-implimentazzjoni konferiti fuq il-Kummissjoni¹;

Imħassar

Emenda 14
PREMESSA 18

L-ghanijiet ta' l-azzjoni li għandha tittieħed, jiġifieri l-armonizzazzjoni ta' l-obbligi fuq il-fornituri li jżommu certa *data* u li jiżguraw li dik id-data tkun disponibbli għal skopijiet ta' prevenzjoni, investigazzjoni, sejba u prosekuzzjoni ta' reati kriminali serji, bħat-terrorizmu u l-kriminalità organizzata, ma jistgħux jintlaħqu b'mod sodisfaċenti mill-Istati Membri u, minħabba l-iskala u l-effetti ta' l-azzjoni, jistgħu jintlaħqu ahjar fuq il-livell ta' Komunità. Għaldaqstant, il-Komunità tista' tadotta miżuri skond il-prinċipju tas-sussidjarjetà kif

L-ghanijiet ta' l-azzjoni li għandha tittieħed, jiġifieri l-armonizzazzjoni ta' l-obbligi fuq il-fornituri li jżommu certa *dejta* u li jiżguraw li dik id-dejta tkun disponibbli għal skopijiet ta' prevenzjoni, investigazzjoni, sejba u prosekuzzjoni ta' reati kriminali serji, bħat-terrorizmu u l-kriminalità organizzata, ma jistgħux jintlaħqu b'mod sodisfaċenti mill-Istati Membri u, minħabba l-iskala u l-effetti ta' l-azzjoni, jistgħu jintlaħqu ahjar fuq il-livell ta' Komunità. Għaldaqstant, il-Komunità tista' tadotta miżuri skond il-prinċipju tas-sussidjarjetà kif

¹ GU L 184, 17.7.1999, p. 23.

stipulat fl-Artikolu 5 tat-Trattat. Skond il-principju tal-proporzjonalità, kif stabbilit f'dak l-Artikolu, din id-Direttiva ma tmurx lil hinn minn dak li huwa meħtieg sabiex jintlaħqu dawk l-ghanijiet.

stipulat fl-Artikolu 5 tat-Trattat. Skond il-principju ta' proporzjonalità, kif stabbilit f'dak l-Artikolu, ***mhuwiex car jekk*** id-Direttiva tmurx lil hinn minn dak li huwa meħtieg ***u proporzjonat*** sabiex jintlaħqu dawk l-ghanijiet, ***kif tirrimarka wkoll il-Kontrollur Ewropew ghall-Protezzjoni ta' l-Informazzjoni.***

Emenda 15
PREMESSA 18 A (ġdida)

(18a) Minhabba li s-sigurtà tad-dejta miżmuma fi ħdan din id-Direttiva hija importanti hafna biex tissalvagwardja d-drittijiet tal-konsumaturi, l-Istati Membri għandhom jassiguraw li jiġu applikati l-ogħla standards ta' sigurtà fil-hażna tad-dejta, b'mod speċjali l-protezzjoni ta' dejta mit-tibdil u mill-aċċess mhux awtorizzat, kif ukoll minn theddid mill-internet u minn sorsi mhux relatati ma' l-internet.

Emenda 16
PREMESSA 18 B (ġdida)

(18b) Is-sigurtà tad-dejta fi ħdan din id-Direttiva trid tkun skond id-dispożizzjonijiet tal-protezzjoni tad-dejta tad-Direttiva 2002/58/KE.

Emenda 17
PREMESSA 19

Din id-Direttiva tirrispetta d-drittijiet fundamentali u ***tosserwa*** l-principji rikonoxxuti b'mod partikolari mill-Karta tad-Drittijiet Fundamentali ta' l-Unjoni Ewropea; B'mod partikolari, din id-Direttiva, flimkien mad-Direttiva 2002/58/KE, tfitdex li tiżgura r-rispett shiħ tad-drittijiet fundamentali tar-rispett tal-ħajja privata u l-komunikazzjonijiet tac-ċittadini u l-protezzjoni tad-data personali (l-Artikoli 7 u 8 tal-Karta)

Din id-Direttiva tista' tirrispetta aktar id-drittijiet fundamentali u l-principji rikonoxxuti, b'mod partikolari, mill-Karta tad-Drittijiet Fundamentali ta' l-Unjoni Ewropea; B'mod partikolari, din id-Direttiva, flimkien mad-Direttiva 2002/58/KE, ***u*** tfitdex li tiżgura r-rispett shiħ tad-drittijiet fundamentali tar-rispett tal-ħajja privata u l-komunikazzjonijiet tac-ċittadini u l-protezzjoni tad-dejta personali (l-Artikoli 7 u 8 tal-Karta) ***kif ukoll is-sentenzi tal-Qorti Ewropea tad-Drittijiet tal-Bniedem***¹.

¹ Ara b'mod partikulari s-sentenzi fil-kazijiet ta' Amann v. l-Iżvizzera (nru.27798/95,ECHR 2000-II tas-16 ta' Frar 2000, fejn il-hażna ta' informazzjoni dwar individwu ġiet meqjusa bhala indhil fil-ħajja privata, għalkemm kien fiha dejta sensittiva) u Malone v. ir-Renju Unit (nru.8691/79, tat-2 t'Awissu 1984, fejn l-istess l-istess haġa ġiet applikata għall-prattika tal-'metering' tat-telefonati, fejn jintuża apparat li awtomatikament jirregista n-numri mmarkati fuq telefon kif ukoll x'hin saret kull telefonata u kemmdamet).

Emenda 18
PREMESSA 19 A (ġdida)

(19a) L-Istati Membru għandhom jassiguraw li l-implementazzjoni ta' din id-Direttiva ssir wara li jiġi kkonsultat is-settur kummerċjali, b'mod speċjali dwar kemm hi possibbli u kemm tiswa ż-żamma. Minħabba l-fatt li ż-żamma tinvolvi sforz prattiku u finanzjarju min-naħha tan-negozji, l-Istati Membri għandhom jiggarrantixxu kumpens shih għal spejjeż žejda għan-negozji minħabba l-obligi jew l-impenji relatati mat-traspożżżjoni ta' din id-Direttiva.

Justification

Combating crime and guaranteeing public security are core duties of the modern state: accordingly, such measures must be fully funded from the public purse, and not at the expense of business, otherwise the attractiveness of Europe as a business location will be diminished. The full (investment and operational) costs of all obligations arising out of this Directive must therefore be entirely borne by the Member States. The same applies to the compilation of statistics, which should primarily be the task of the Member States.

Emenda 19 ARTIKOLU 1, PARAGRAFU 1

1. L-ġħan ta' din id-Direttiva huwa li tarmonizza d-dispożizzjonijiet ta' l-Istati

1. L-ġħan ta' din id-Direttiva huwa li tarmonizza d-dispożizzjonijiet ta' l-Istati

Membri dwar l-obbligi fuq il-fornituri ta' servizzi ta' komunikazzjoni elettronika disponibbli ghall-pubbliku jew ta' netwerk ta' komunikazzjoni pubblika fejn jidħlu l-iproċessar u ż-żamma ta' certa *data*, **sabiex** jiġi żgurat li d-*data* tkun disponibbli għal skopijiet ta' **prevenzjoni**, investigazzjoni, sejba u prosekuzzjoni ta' reati kriminali serji, **bhat-terrorizmu u l-kriminalità organizzata**.

Membri dwar l-obbligi fuq il-fornituri ta' servizzi ta' komunikazzjoni elettronika disponibbli ghall-pubbliku jew ta' netwerk ta' komunikazzjoni pubblika fejn jidħlu l-iproċessar u ż-żamma ta' certa *dejta*, **u li tassigura li d-drittijiet għar-rispett tal-hajja privata u għall-protezzjoni ta' dejta personali f'dak li għandu x'jaqsam ma' l-aċċess u l-użu ta' din id-dejta jiġu rispettati kompletament**, sabiex jiġi żgurat li d-dejta tkun disponibbli għal skopijiet ta' investigazzjoni, sejba u prosekuzzjoni ta' reati kriminali serji, **kif imsemmi fl-Artikolu 2 (2) tad-Deciżjoni ta' Qafas tal-Kunsill 2002/584/JHA**.

Emenda 20 ARTIKOLU 1, PARAGRAFU 2

2. Din id-Direttiva għandha tapplika għal *data* dwar it-traffiku **u dwar il-lok**, għal persuni kemm naturali u legali, kif ukoll għad-data **relatata** meħtieġa biex ikun identifikat l-abbonat jew l-utent irregistrator. M'għandhiex tapplika għall-kontenut tal-komunikazzjoni elettronika, inkluża informazzjoni kkonsultata waqt l-użu ta' netwerk ta' komunikazzjoni elettronika.

2. Din id-Direttiva għandha tapplika għal *dejta* dwar it-traffiku u **dwar il-lok**, għal persuni kemm naturali u legali, kif ukoll għad-dejta meħtieġa biex ikun identifikat l-abbonat jew l-utent irregistrator. M'għandhiex tapplika għall-kontenut tal-komunikazzjoni elettronika, inkluża informazzjoni kkonsultata permezz ta' l-użu ta' netwerk ta' komunikazzjoni elettronika.

(*Din l-emenda tapplika għat-test kollu. L-adozzjoni tagħha toħloq il-bżonn li jsiru l-bidliet korrispondenti fit-test kollu.*)

Amendment 21 ARTICLE 2, PARAGRAPH 2, POINT (A) AND (A A) (new)

'*data*' tfisser *data* dwar *it-traffiku u data* **dwar il-lok**, kif ukoll id-*data* relatata neċċessarja biex ikun identifikat l-abbonat jew l-utent;

'*dejta*' tfisser *dejta trasmessa u dejta maħażuna f'llok*, kif ukoll id-dejta relatata neċċessarja biex ikun identifikat l-abbonat jew l-utent;

aa) 'awtoritajiet nazzjonali kompetenti' tfisser l-awtoritjet ġudizzjarji u awtoritajiet nazzjonali responsabbi mill-investigazzjoni, mill-iskoperta u mill-

prosekuzzjoni ta' reat kriminali serji.

Emenda 22

ARTIKOLU 2, PARAGRAFU 2, PUNT (BA) (ġdid)

ba) 'reati kriminali serji' tirreferi għar-reati msemmija fl-Artikolu 2(2) tad-Deciżjoni ta' Qafas tal-Kunsill 2002/584/JHA!.

'Id-Deciżjoni ta' Qafas tal-Kunsill tat-13 ta' Ĝunju 2002 dwar il-mandatt ta' arrest Ewropew u l-proċeduri ta' cediment bejn l-Istati membri.

Emenda 23

ARTIKOLU 2, PARAGRAFU 2, PUNT (BB) (ġdid)

bb) 'telefonata li ma tirnexxix' tfisser il-komunikazzjoni meta telefonata tiġi mqabda b'succcess imma ħadd ma jirrispondi jew ikun hemm intervezjoni ta' mmaniġġjar tan-netwerk.

Emenda 24

ARTIKOLU 3, PARAGRAFU 1

1. B'deroga mill-Artikoli 5, 6 u 9 tad-Direttiva 2002/58/KE, l-Istati Membri għandhom jadottaw miżuri sabiex jiżguraw li d-data ġġenerata jew ipproċessata *mill-fornituri ta' servizzi ta' komunikazzjoni elettronika disponibbli ghall-pubbliku, jew ta' netwerk ta' komunikazzjoni pubblika, fil-ġurisdizzjoni tagħhom fil-proċess tal-forniment ta' servizzi ta' komunikazzjoni tinżamm skond id-dispozizzjonijiet ta' din id-Direttiva.*

1. B'deroga mill-Artikoli 5, 6 u 9 tad-Direttiva 2002/58/KE, l-Istati Membri għandhom jadottaw miżuri sabiex jiżguraw li, *f'każ li komunikazzjoni sseħħ b'succcess, fornituri ta' servizzi eletronici ta' komunikazzjoniet aċċessibbli mill-pubbliku jew netwerks ta' komunikazzjoni pubblika li jipprovd u s-servizz imsemmi, iżommu u jpoġġu għad-dispozizzjoni dejta ġġenerata u pproċessata fil-proċess tal-forniment ta' servizzi ta' komunikazzjoni skond id-dispozizzjonijiet ta' din id-Direttiva *mill-fornitur li offra s-servizz ta' komunikazzjoni elettroniku rispettivament użat.**

Or. en

Emenda 25
ARTIKOLU 3, PARAGRAFU 2

2. L-Istati Membri għandhom jadottaw miżuri sabiex jiżguraw li d-data miżmuma skond din id-Direttiva tingħata biss lill-awtoritajiet nazzjonali kompetenti, f'każijiet specifiċi u skond ***il-legiżlazzjoni nazzjonali***, għal skopijiet ta' prevenzjoni, investigazzjoni, sejba u prosekuzzjoni ta' reati kriminali serji, ***bhat-terroriżmu u l-kriminalità organizzata***.

2. L-Istati Membri għandhom jadottaw miżuri sabiex jiżguraw li d-dejta miżmuma skond din id-Direttiva tingħata biss lill-awtoritajiet nazzjonali kompetenti, ***wara l-approvazzjoni ta' l-awtoritajiet ġudizzjarji skond il-legiżlazzjoni nazzjonali***, f'każijiet specifiċi u skond ***id-dispożizzjonijiet ta' din id-Direttiva***, għal skopijiet ta' prevenzjoni, investigazzjoni, sejba u prosekuzzjoni ta' reati kriminali serji, ***kif imsemmi fl-Artikolu 2(2) tad-Deciżjoni ta' Qafas tal-Kunsill 2002/584/JHA***.

Din id-Direttiva għandha taqbel mal-principji stipulati fid-Deciżjoni ta' Qafas tal-Kunsill dwar [protezzjoni tad-dejta].

Emenda 26
ARTIKOLU 3, PARAGRAFU 2 A (ġidid)

2a. Wara din il-konkluzjoni, għandha tīgi ippubblikata lista aġġornata ta' l-awtoritajiet kompetenti maħtura biex jinfurzaw il-ligi.

Emenda 27
ARTIKOLU 3 A (ġidid)

Artikolu 3a

Aċċess għal dejta miżmuma

1. Kull Stat Membru għandu jiżgura li fornituri ta' servizzi eletroniċi ta' komunikazzjoni li huma disponibbli ghall-pubbliku jew ta' netwerk ta' kommunikazzjoni għandhom jiġgarantixxu aċċess biss għad-dejta miżmuma skond din id-Direttiva bil-kundizzjonijiet minimi li ġejjin, u kull Stat Membru għandu jistabbilixxi rimedji ġudizzjarji skond id-dispożizzjonijiet f'Kapitolu III tad-Direttiva 95/46/KE:

- (a) *id-dejta hi aċċessibbli biss għal skopijiet speċifiċi, espliċiti u leggħiġi definiti minn din id-Direttiva, minn awtoritajiet kompetenti nazzjonali li huma awtorizzati minn awtorità ġudizzjarja jew awtorità kompetenti indipendenti nazzjonali oħra, fuq bażi ta' kaž b'kaž u bir-rispett lejn is-segretezza professionali skond il-ligijiet nazzjonali;*
- (b) *id-dejta m'għandhiex tkun aktar ipproċessata b'mod li ma tkunx kompatibbli ma' dawn l-iskopijiet; kull proċessar iehor ta' dejta miżmuma mill-awtoritajiet nazzjonali kompetenti għal aktar proċedimenti relatati għandu jkun limitat fuq il-bażi ta' salvagwardji stretti;*
- (c) *kull aċċess għad-dejta minn korpi governattivi oħra jew kumpaniji privati hu projbit;*
- (d) *il-proċess li għandu jkun segwit sabiex wieħed jkollu aċċess għad-dejta miżmuma u biex iżomm dejta li tkun ġiet aċċessata, hu definit minn kull Stat Membru fil-liġi nazzjonali tiegħu; il-fornituri m'għandhomx permess li jipproċessaw dejta miżmuma skond din id-Direttiva ghall-iskopijiet tagħhom;*
- (e) *Id-dejta mitluba trid tkun neċċesarjament rilevanti u pproporzjonata meta mqabbla ma' l-iskopijiet għalfejn qed tkun aċċessjata. Id-dejta tiġi pproċessata b'mod xieraq u skond il-ligi:*

in any case access is restricted to those data that are necessary in the context of a specific investigation and does not include large-scale data-mining in respect of travel and communications patterns of people unsuspected by the competent national authorities;

f'kull kaž l-aċċess hu ristrett għal dik id-dejta li hi neċċesarja fil-kuntest ta' investigazzjoni speċifika u ma tinkludix tħalli għal dejta fuq skala kbira fejn għandu x'jaqsam ma' drawwiet ta' vjaġġar u komunikazzjoni ta' persuni mhux suspettati mill-awtoritajiet kompetenti

nazzjonali;

- (f) kull aċċessar ta' dejta miżmuma jiġi rrekordjata *f'registrū ta' proċessar tad-dejta* (*data processing register*) li jippermetti l-identifikazzjoni ta' min ikun talab l-aċċess, il-kontrolluri tad-dejta, l-istaff awtorizzat li jaċċessa u jipproċessa d-dejta, l-awtorizzazzjoni ġudizzjarja fil-kwistjoni, id-dejta kkonsultata u l-iskop li għalih giet ikkonsultata,
- (g) id-dejta għandha tkun b'tali mod li tippermetti li suġġetti ta' dejta jkunu identifikati biss sakemm ikun neċċesarju għall-iskop li għalih d-dejta tkun għet miġbura u pproċessata aktar;
- (h) il-kunfidenzjalità u l-integrità tad-dejta għandha tiġi salvagwardjata, inkluż ir-rispett lejn is-segrezza professjonal; kull ġbir ta' dejta għandu jkun irrekordjat u dawn ir-rekords għandhom ikunu disponibbli għall-awtoritajiet nazzjonali għall-protezzjoni tad-dejta.
- (i) dejta aċċessata hi preciża u, kull pass neċċesarju jittieħed sabiex jkun żgurat li dejta personali li mhix preciża, fir-rigward ta' l-iskopijiet li għalih d-dejta għet miġbura jew li għalih d-dejta għet aktar proċessata, tiġi mħassra jew retifikata.
- (j) dejta tiġi mħassra la darba dik id-dejta ma tkunx aktar neċċesarja għall-iskop għal-liema tkun għet miċċitta;
- (k) l-awtoritajiet kompetenti nazzjonali jistgħu biss jgħaddu d-dejta lil pajjiżi terzi permezz ta' Ftehma Internazzjonali li tkun intlaħa fuq bażi ta' l-Artikolu 300, tat-Trattat u biss jekk ikun ingħata l-kunsens mill-Parlament Ewropew dwar din il-ftehma (Artikolu 300, paragrafu 3, subparagrafu 2 tat-Trattat).

Emenda 28
ARTIKOLU 3 B (ġidid)

Artikolu 3b

Protezzjoni tad-dejta u sigurtà tad-dejta

Kull Stat Membru għandu jiżgura li d/dejta miżmuma skond din id-Direttiva hi suġġetta, bħala minimu, għar-regoli li jimplimentaw l-Artikolu 17 tad-Direttiva 95/46/KE dwar il-protezzjoni ta' l-individwi fir-rigward ta' l-ipproċessar tad-dejta persunali u tal-moviment ħieles ta' din id-dejta, għad-dispozizzjonijiet ta' l-Artikolu 4 u 5 tad-Direttiva 2002/58/KE u tal-prinċipji ta' sigurtà tad-dejta li ġejjin:

- (a) id-dejta għandha tkun suġġetta għal miżuri tekniċi u organizazzatti xiex qasabli jipproteġu d-dejta minn distruzzjoni aċċidental jew illegali jew telf, alterazzjoni, żvelar jew aċċess mhux awtorizzat jew illegali, u minn kull forma oħra ta' proċessar illegali;*
- (b) id-dejta għandha tkun suġġetta għal miżuri tekniċi u organizazzatti xiex qasabli ikun żgurat li żvelar, u aċċess ta' dejta jsir biss minn persuni awtorizzati li l-kondotta tagħhom tkun suġġetta ghall-superviżjoni minn awtorità kompetenti ġudizzjarja jew amministrattiva;*
- (c) forniturek ta' servizzi elettronici ta' kommunikazzjoni li huma disponibbli għall-pubbliku jew netwerks kif ukoll awtoritajiet ta' l-Istati Membri li jaċċessaw id-dejta għandhom jirrekkordjaw l-aċċess kollha u jieħdu l-miżuri xiex qasabli ta' sigurtà sabiex jevitaw issejvjjar, aċċess, ipproċessar, żvelar, jew użu, inkluz użu permezz ta' sistemi tekniċi kompletament aġġornati biex jipproteġu l-integrità tad-dejta u permezz ta' hħatra ta' staff awtorizzat speċjalment li jista' jkollu aċċess esklussiv għad-dejta, li ma jkunux awtorizzati jew ma jkunux xieraq jew ma jkunux skond il-ligi.*

d) fornituri ta' servizzi elettronici ta' kommunikazzjoni li huma disponibbli ghall-pubbliku jew ta' netwerks joholqu sistema separata ta' issejvjär ta' dejta ghall-skopijiet ta' ordni pubblika. Id-dejta ta' din is-sistema separata ma tistax tkun użata taht l-ebda ġirkustanza għal skopijiet ta' negozju jew skopijiet oħra li ma jkunux espliċitament awtorizzati skond din id-Direttiva;

(e) l-awtoritajiet kompetenti nazzjonali jistgħu jghaddu d-dejta lil pajjiżi terzi permeżż ta' Ftehma Internazzjonali li tkun intlaħqet fuq bażi ta' l-Artikolu 300, tat-Trattat u biss jekk ikun ingħata kunsens mill-Parlament Ewropew dwar dan il-ftehma (Artikolu 300, paragrafu 3, subparagraphu 2 tat-Trattat);

(f) id-dejta kollha għandha tīgi meqruda fl-ahħar tal-perijodu ta' żamma ħlief dik id-dejta li ġiet aċċessata u ppreservata;

(g) l-awtorità ghall-protezzjoni tad-dejta jew awtorità kompetenti indipendent oħra f'kull Stat Membru, kif preskrift mil-liġi nazzjonali tkun maħtura sabiex tissorvelja l-implementazzjoni illegali ta' din id-Direttiva.

Emenda 29
ARTIKOLU 4, PARAGRAFU 1

Kategoriji ta' dejta li għandhom jinżammu

L-Istati Membri għandhom jiżguraw li l-kategoriji ta' *data* li ġejjin jinżammu *taħt* din id-Direttiva:

- (a) *data* meħtiega biex jiġi traċċat u identifikat is-sors ta' komunikazzjoni;
- (b) *data* meħtiega biex tīgi traċċata u identifikata d-destinazzjoni ta' komunikazzjoni;
- (c) *data* meħtiega biex jiġu identifikati d-data, il-hin u t-tul ta' komunikazzjoni;
- (d) *data* meħtiega biex jiġi identifikat it-tip ta' komunikazzjoni;

Kategoriji **u tipi** ta' dejta li għandhom jinżammu

I. L-Istati Membri għandhom jiżguraw li l-kategoriji ta' *dejta* li ġejjin jinżammu skond din id-Direttiva:

- (a) *dejta* meħtiega biex jiġi traċċat u identifikat is-sors ta' komunikazzjoni;
- (b) *dejta* meħtiega biex tīgi traċċata u identifikata d-destinazzjoni ta' komunikazzjoni;
- (c) *dejta* meħtiega biex jiġu identifikati d-data, il-hin u t-tul ta' komunikazzjoni;
- (d) *dejta* meħtiega biex jiġi identifikat it-tip ta' komunikazzjoni;

- (e) *data* meħtiega biex jiġi identifikat il-mezz ta' komunikazzjoni jew il-mezz ta' komunikazzjoni maħsub;
- (f) *data* meħtiega biex jiġi identifikat il-lok fejn ikun jinsab l-apparat ta' komunikazzjoni mobbli.

It-tipi ta' data li għandhom jinżammu taħt il-kategoriji ta' data msemmija hawn fuq huma speċifikati fl-Anness.

- (e) *dejta* meħtiega biex jiġi identifikat il-mezz ta' komunikazzjoni jew il-mezz ta' komunikazzjoni maħsub;
- (f) *dejta* meħtiega biex jiġi identifikat il-lok fejn ikun jinsab l-apparat ta' komunikazzjoni mobbli.

L-ebda dejta li tiżvela l-kontenut tal-komunikazzjoni ma tista' tinżamm.

Emenda 30
ARTIKOLU 4, PARAGRAFU 1 A (ġdid)

- "1a. Tipi ta' dejta li għandhom jinżammu:***
- 1) Rigward it-Telefonija fuq Netwerk Fissa***
- a) Dejta meħtiega biex jiġi traċċat u identifikat is-sors ta' komunikazzjoni:***
 - (a) In-numru tat-telefown li minnu tkun qed issir it-telefonata;***
 - (b) L-isem u l-indirizz ta' l-abbonat jew l-utent irregistrat;***
 - (b) Dejta meħtiega biex tiġi traċċata u identifikata d-destinazzjoni ta' komunikazzjoni:***
 - (a) In-numru jew numri tat-telefown li lejhom tkun qed issir it-telefonata;***
 - (b) L-isem/ismijiet u l-indirizz(i) ta' l-abbonat(i) jew l-utent(i) irregistrat(i);***
 - c) Dejta meħtiega biex jiġu identifikati d-data, il-ħin u t-tul ta' komunikazzjoni:***
 - (a) Id-data u l-ħin tal-bidu u tat-tmiem tal-komunikazzjoni.***
 - d) Dejta meħtiega biex jiġi identifikat it-tip ta' komunikazzjoni:***
 - (a) Is-servizz tat-telefown użat, eż. bil-leħen, telefonata konferenza, faks u servizzi ta' messaġġi.***
- 2) Rigward Telefonija Mobbli:***
- a) Dejta meħtiega biex jiġi traċċat u identifikat is-sors ta' komunikazzjoni:***
 - (a) In-numru tat-telefown li minnu tkun***

qed issir it-telefonata;

(b) L-isem u l-indirizz ta' l-abbonat jew l-utent irregistrat;

b) Dejta mehtiega biex tiġi traċċata u identifikata d-destinazzjoni ta' komunikazzjoni:

(a) In-numru jew numri tat-telefown li lejhom tkun qed issir it-telefonata;

(b) L-isem/ismijiet u l-indirizz(i) ta' l-abbonat(i) jew l-utent(i) irregistrat(i);

c) Dejta mehtiega biex jiġu identifikati d-data, il-ħin u t-tul ta' komunikazzjoni;

(a) Id-data u l-ħin tal-bidu u tat-tmiem tal-komunikazzjoni.

d) Dejta mehtiega biex jiġi identifikat it-tip ta' komunikazzjoni;

(a) Is-servizz tat-telefown użat, eż. bil-leħen, telefonata konferenza, Servizz ta' Messaggi Qosra (Short Message Service: SMS), Servizz ta' Midja Mtejba (Enhanced Media Service: EMS) jew Servizz ta' Multimedja (Multi-Media Service: MMS).

e) Dejta mehtiega biex jiġi identifikat il-mezz ta' komunikazzjoni jew il-mezz ta' komunikazzjoni mahsub:

(a) L-Identità ta' l-Abbonat ta' Mowbajl Internazzjonali (International Mobile Subscriber Identity: IMSI) ta' min iċempel u min jirċievi t-telefonata;

(b) F'każ ta' servizzi jew kards 'pre-paid' anonimi, id-data u l-ħin ta' meta tkun għiet attivata il-kard u t-tikketta ('Cell ID') ta' minn fejn tkun saret l-attivazzjoni.

f) Dejta mehtiega biex jiġi identifikat il-lok fejn ikun jinsab l-apparat ta' komunikazzjoni mobbli:

(a) It-tikketta tal-lok (Cell ID) malli tibda l-komunikazzjoni;

3) Rigward l-Internet:

a) Dejta mehtiega biex jiġi traċċat u identifikat is-sors ta' komunikazzjoni:

- (a) L-indirizz tal-Protokoll ta' l-Internet (IP), kemm jekk dinamiku kiff ukoll jekk statiku, allokat għal komunikazzjoni mill-fornitur ta' l-aċċess ghall-Internet;*
- (b) It-Tikketta ta' Konnessjoni jew in-numru tat-telefown allokat lil komunikazzjoni li tidhol fin-netwerk pubblika tat-telefown;*
- (c) L-isem u l-indirizz ta' l-abbonat jew l-utent irregistrat li għalih gew allokati l-indirizz IP jew it-Tikketta ta' Konnessjoni fil-hin tal-komunikazzjoni.*

b) Dejta mehtiega biex jiġu identifikati d-data, il-hin u t-tul ta' komunikazzjoni:

- (a) Id-data u l-hin tal-bidu u tat-tmiem ta' sessjonijiet fuq l-internet ibbażati fuq żona ta' hin partikolari.*
- c) Dejta mehtiega biex jiġi identifikat il-mezz ta' komunikazzjoni jew il-mezz ta' komunikazzjoni maħsub:*
 - (a) In-numru tat-telefown li wieħed cempel għal aċċess 'dial-up';*
 - (b) Il-linja ta' l-abbonat digħalli (DSL) jew identifikatur tal-lok iehor ta' l-originatur tal-komunikazzjoni;*

Emenda 31
ARTIKOLU 4, PARAGRAFU 2

It-tipi ta' data li għandhom jinżammu taħt il-kategoriji ta' data msemmija hawn fuq huma speċifikati fl-Anness.

L-Istati Membri għandhom ikunu hielsa li jitkolli lill-fornituri ta' servizzi eletronici ta' komunikazzjoni li huma disponibbli għall-pubbliku jew ta' netwerks ta' komunikazzjoni sabiex iżommu dejta riġward sejhiet telefoniċi li ma jirnexx il-homx jagħmlu komunikazzjoni, f'dawn il-kategoriji ta' dejta skond il-liġijiet nazzjonali tagħhom.

Dejta li tiżvela l-kontenut ta' komunikazzjoni m'għandhiex tkun inkluża.

Emenda 32
ARTIKOLU 5

Revizjoni ta' l-anness

L-Anness għandu jiġi rivedut fuq bażi regolari kif ikun meħtieg skond il-proċedura msemmija fl-Artikolu 6(2).

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Emenda 33
ARTIKOLU 6

Kumitat

1. *Il-Kummissjoni għandha tkun assistita minn Kumitat kompost minn rappreżentanti ta' l-Istati Membri u ppresedut mir-rappreżentant tal-Kummissjoni.*
2. *Fejn issir referenza għal dan il-paragrafu, għandhom japplikaw l-Artikoli 5 u 7 tad-Deciżjoni 1999/468/KE, filwaqt li jiġu kkunsidrati d-dispożizzjonijiet ta' l-Artikolu 8 tagħha.*
3. *Il-perjodu stipulat fl-Artikolu 5(6) tad-Deciżjoni 1999/468/KE għandu jkun ta' tliet xhur.*

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Emenda 34
ARTIKOLU 7

L-Istati Membri għandhom jiżguraw li l-kategoriji ta' *data* msemmija fl-Artikolu 4 jinżammu għal perjodu *ta' sena* mid-data tal-komunikazzjoni, *bl-eċċeazzjoni ta' data dwar komunikazzjoni elettronika li jużaw l-aktar jew kompletament Protokoll ta' l-Internet. Din ta' l-ahhar għandha tinżamm għal perjodu ta' 6 xhur.*

L-Istati Membri għandhom jiżguraw li l-kategoriji ta' *dejta* msemmija fl-Artikolu 4 jinżammu għal perjodu *ta' bejn sitta u tnax-il xahar* mid-data tal-komunikazzjoni; *minn dakinhar lil hinn, id-dejta trid tithassar.*

Awtoritajiet kompetenti għall-infurzar tal-liġi għandhom jiżguraw li dejta li tkun għiet trasferita tithassar b'mod awtomatiku la darba l-investigazzjoni li għalih ikun ingħata l-aċċess għad-diddejha tkun spicċat.

Emenda 35
ARTIKOLU 7, PARAGRAFU 1 A (ġidid)

Il-Kummissjoni għandha tinforma lill-Parlament Ewropew bin-notifikazzjonijiet li jsiru mill-Istati Membri skond l-Artikolu 95(4) tat-Trattat.

Emenda 36
ARTIKOLU 8

L-Istati Membri għandhom jiżguraw li d-data tinżamm skond din id-Direttiva b'mod li d-data miżmura u kull informazzjoni oħra neċessarja li jkollha x'taqsam ma' dik id-data jkunu jistgħu jiġu trażmessi fuq talba ta' l-awtoritajiet kompetenti mingħajr dewmien żejjed.

L-Istati Membri għandhom jiżguraw li d-dejta kif imfissra fl-Artikolu 4 tinżamm mill-fornituri ta' servizzi elettronici ta' komunikazzjoni li huma disponibbli għall-pubbliku jew ta' netwerks ta' komunikazzjoni pubblici, skond din id-Direttiva b'mod li d-dejta miżmura u kull informazzjoni oħra neċessarja li jkollha x'taqsam ma' dik id-dejta jkunu jistgħu jiġu trażmessi fuq talba ta' l-awtoritajiet kompetenti nazzjonali ta' l-Istati Membri kkonċernati mingħajr dewmien żejjed.

L-ipproċessar tad-dejta jsir skond id-dispozizzjonijiet ta' l-Artikolu 17 tad-Direttiva 95/46/KE u l-Artikolu 4 tad-Direttiva 2002/58/KE.

Emenda 37
ARTIKOLU 8, PARAGRAFU 1 A (ġidid)

L-Istati Membri għandom jiżguraw li l-fornituri ta' servizzi eletronici ta' komunikazzjoni li huma disponibbli għall-pubbliku jew ta' netwerks ta' komunikazzjoni pubblici kkonċernati li jinsabu fuq it-territorju tagħhom, jaħtru persuna li sservi ta' kuntatt sabiex jimmaniġġja t-talbiet għal aċċess tad-dejta.

Emenda 38
ARTIKOLU 8 A (ġidid)

Artikolu 8a

Sanzjonijiet

1. L-Istati Membri għandhom jistipulaw sanzjonijiet effettivi, proporzjonati u disważivi (inkluži sanzjonijiet kriminali u amministrattivi) għall-ksur tad-dispozizzjonijiet nazzjonali adottati għall-implimentazzjoni ta' din id-Direttiva.

2. L-Istati Membri għandhom jiżguraw li persuni li kontrijhom jitresqu procedimenti bil-hsieb ta' imponiment ta' sanzjonijiet għandhom drittijiet effettivi għal difiża u għal appell.

Emenda 39 ARTIKOLU 9

L-Istati Membri għandhom jiżguraw li kull sena jfornu lill-Kummissjoni bi statistika dwar iż-żamma ta' *data* pproċessata b'konnessjoni mal-forniment ta' servizzi *pubblici* ta' komunikazzjoni elettronika. Din l-istatistika għandha tinkludi

- il-każijiet fejn l-informazzjoni ngħatat lill-awtoritajiet kompetenti skond il-ligi nazzjonali applikabbi,
- iż-żmien li ghadda bejn id-data li fiha nżammet id-*data* u d-data li fiha l-awtorità kompetenti talbet it-trażmissjoni tad-*data*;
- *il-każijiet fejn it-talbiet għad-data ma setgħux ikunu sodisfatti.***

L-Istati Membri għandhom jiżguraw li kull sena jfornu lill-Kummissjoni bi statistika dwar iż-żamma ta' *dejta* pproċessata b'konnessjoni mal-forniment ta' servizzi ta' komunikazzjoni elettronika. ***ENISA tista' tipprovdi ghajjnuna lill-Istati Membri sabiex jiġbru dawn l-istatistika.*** Dawn l-istatistika, ***li għandha ssir mill-awtoritajiet kompetenti nazzjonali***, għandha tinkludi

- il-każijiet fejn l-informazzjoni ngħatat lill-awtoritajiet kompetenti skond il-ligi nazzjonali applikabbi,
- iż-żmien li ghadda bejn id-data li fiha nżammet id-*dejta* u d-data li fiha l-awtorità kompetenti talbet it-trażmissjoni tad-*dejta*;
- *in-numru ta' każijiet fejn id-dejta mitluba ma tkunx wasslet direttament għall-konklużjoni b'suċċess ta' l-investigazzjonijiet rilevanti;***
- *in-numru ta' każijiet fejn id-dejta mitluba ma tkunx disponibbi għall-investigazzjonijiet ikkonċernati.***
- *il-każijiet fejn ikun seħħ ksur ta' siġurtà kemm jekk ikun fattwali kif ukoll suspettuż.***

Il-Kummissjoni Ewropea għandha tressaq

*din l-istatistika lill-Parlament Ewropew
kull sena u imbagħad kull tliet snin.*

Dawn l-istatistiċi m'għandhomx jinkludu
data personali.

Dawn l-istatistiċi m'għandhomx jinkludu
dejta personali.

Emenda 40
ARTIKOLU 9 A (ġdid)

Artikolu 9a

- 1. Kull Stat Membru għandu jipprovdi li awtorità pubblika waħda jew aktar ikunu responsabbi mil-monitorjar fit-territorju tiegħi ta' l-applikazzjoni tad-dispozizzjonijiet adottati mill-Istati Membru skond din id-Direttiva rigward is-sigurta tad-dejta mahżuna.*
- 2. Dawn l-awtoritajiet għandhom jaġixxu b'indipendenza shiha biex jeżerċitaw il-funzjonijiet imsemmija f'paragrafu 1.*

Emenda 41
ARTIKOLU 10

L-Istati Membri għandhom jiżguraw li l-fornituri ta' servizzi ta' komunikazzjoni elettronika disponibbli għall-pubbliku jew ta' netwerk ta' komunikazzjoni pubblika jiġu kkumpensati għal spejjeż addizzjonali ppruvati li jkunu nefqu sabiex ikunu konformi ma' l-obbligi imposti fuqhom b'konsegwenza ta' din id-Direttiva.

L-Istati Membri għandhom jiżguraw li l-fornituri ta' servizzi ta' komunikazzjoni elettronika disponibbli għall-pubbliku jew ta' netwerk ta' komunikazzjoni pubblika jiġu kkumpensati għal spejjeż addizzjonali **ta' investiment u ta' operat** ippruvati li jkunu nefqu sabiex ikunu konformi ma' l-obbligi imposti fuqhom b'konsegwenza ta' din id-Direttiva **inkluži spejjeż addizzjonali ppruvati ta' protezzjoni ta' dejta u kull amenda li ghad trid issir. Ir-imbors għandu jinkludi l-ispejjeż ippruvati sabiex id-dejta mizmuma tkun saret għad-dispozizzjoni ta' l-awtoritajiet kompetenti nazzjonali.**

Emenda 42
ARTIKOLU 11
ARTIKOLU 15, PARAGRAFU 1a (Direttiva 2002/58/KE)

"1a. Il-paragrafu 1 m'għandux japplika għal obbligi li għandhom x'jaqsmu maż-żamma ta' *data għall-prevenzjoni*, l-investigazzjoni, is-sejba u l-prosekuzzjoni ta' reati kriminali serji, bħat-terrorizmu u l-kriminalità organizzata, li toħrog mid-Direttiva 2005/../KE.

"1a. Il-paragrafu 1 m'għandux japplika għal obbligi li għandhom x'jaqsmu maż-żamma ta' *dejta ghall-investigazzjoni*, is-sejba u l-prosekuzzjoni ta' reati kriminali serji, bħat-terrorizmu u l-kriminalità organizzata, li toħrog ***mit-transpożizzjoni tad-Direttiva 2005/../KE.***

L-Istati Membri għandhom jibqghu lura milli jadottaw mżuri leġiżlattivi fis-setturi li din id-Direttiva tkopri.

Emenda 43 ARTIKOLU 12, PARAGRAFU 1

1. Mhux aktar tard minn ***tliet snin*** mid-data msemmija fl-Artikolu 13(1), il-Kummissjoni għandha tissottometti lill-Parlament Ewropew u lill-Kunsill ***valutazzjoni ta' l-applikazzjoni ta' din id-Direttiva u l-impatt tagħha*** fuq l-operaturi ekonomiċi u l-konsumaturi, filwaqt li tikkunsidra l-elementi statistici mogħtija lil-Kummissjoni skond l-Artikolu 9 ***bl-iskop li jiġi ddeterminat jekk ikunx meħtieġ li jiġu modifikati d-dispożizzjonijiet ta' din id-Direttiva, b'mod partikolari fir-rigward tal-perjodu taż-żamma msemmi fl-Artikolu 7.***

1. Mhux aktar tard minn ***sentejn*** mid-data msemmija fl-Artikolu 13(1), il-Kummissjoni għandha tissottometti lill-Parlament Ewropew u lill-Kunsill ***evalwazzjoni tan-neċċessità u ta' l-effettività tad-dispożizzjonijiet f'din id-Direttiva, u ta' l-impatt fuq id-drittijiet fundamentali tas-suġġetti tad-dejta. L-evalwazzjoni trid tikkunsidra wkoll l-impatt tal-mżuri*** fuq l-operaturi ekonomiċi u l-konsumaturi, filwaqt li tikkunsidra l-elementi statistici mogħtija lil-Kummissjoni skond l-Artikolu 9.

Ir-riżultati ta' l-evalwazzjoni jiet għandhom ikunu disponibbli għall-publiku.

Emenda 44 ARTIKOLU 12, PARAGRAFU 2

2. Għal dak il-ghan, il-Kummissjoni għandha teżamina l-osservazzjonijiet kollha kkommunikati lilha mill-Istati Membri jew mill-Grupp ta' Hidma dwar il-Protezzjoni ta' l-Individwi fir-rigward ta' l-Ipproċessar ta' *Data Personali* istitwit bl-Artikolu 29 tad-Direttiva 95/46/KE.

2. Għal dak il-ghan, il-Kummissjoni għandha teżamina l-osservazzjonijiet kollha kkommunikati lilha mill-Istati Membri jew mill-Grupp ta' Hidma dwar il-Protezzjoni ta' l-Individwi fir-rigward ta' l-Ipproċessar ta' *Dejta Personali* istitwit bl-Artikolu 29 tad-Direttiva 95/46/KE ***jew mis-Superviżur***

Ewropew ghall-Protezzjoni tad-Dejta.

Emenda 45
ARTIKOLU 14 A (ġdid)

Artikolu 14a

Revizjoni

Mhux aktar tard minn sentejn wara d-data msemmija fl-Artikolu 13(1), din id-Direttiva għandha tkun riveduta skond il-proċedura stabilita fl-Artikolu 251 tat-Trattat. Partikolarment, it-tipi ta' dejta miżmuma u l-perijodi ta' żamma għandhom ikunu evalwati sabiex tkun determinata r-rilevanza tagħhom fil-ġlieda kontra t-terroriżmu u kontra l-kriminalità organizzata fid-dawl ta' l-istatistika miġbura skond l-Artikolu 9. Ir-revizjoni għandha issir kull tliet snin.

Emenda 46
ANNESS

Tipi ta' dejta li għandhom jinżammu taħt il-kategoriji identifikati fl-Artikolu 4 ta' din id-Direttiva:

a) Dejta meħtieġa biex jiġi traċċat u identifikat is-sors ta' komunikazzjoni:

(1) Rigward it-Telefonija fuq Netwerk Fissa:

(a) In-numru tat-telefown li minnu tkun qed issir it-telefonata;

(b) L-isem u l-indirizz ta' l-abbonat jew l-utent irregjistrat;

(2) Rigward it-Telefonija Mobbli:

(a) In-numru tat-telefown li minnu tkun qed issir it-telefonata;

(b) L-isem u l-indirizz ta' l-

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abbonat jew l-utent irregisrat;

(3) Rigward l-Aċċess ghall-Internet, E-mail bl-Internet u Telefonija bl-Internet:

- (a) L-indirizz tal-Protokoll ta' l-Internet (IP address), kemm jekk dinamiku kif ukoll statiku, allokat għal komunikazzjoni mill-fornitur ta' l-aċċess ghall-internet;*
- (b) L-ID ta' l-utent tas-sors ta' komunikazzjoni;*
- (c) It-Tikketta tal-Konnessjoni jew in-numru tat-telefown allokat lil komunikazzjoni li tidhol f'netwerk tat-telefown pubblika;*
- (d) L-isem u l-indirizz ta' l-abbonat jew utent irregisrat li lilu kien allokat l-indirizz IP, it-Tikketta tal-Konnessjoni jew l-ID ta' l-utent waqt il-komunikazzjoni.*

b) Dejta meħtieġa biex tīgi traċċata u identifikata d-destinazzjoni ta' komunikazzjoni:

(1) Rigward it-Telefonija fuq Netwerk Fissa:

- (a) In-numru jew numri tat-telefown li lejhom tkun qed issir it-telefonata;*
- (b) L-isem/ismijiet u l-indirizz(i) ta' l-abbonat(i) jew l-utent(i) irregisrat(i);*

(2) Rigward it-Telefonija Mobbli:

- (a) In-numru jew numri tat-telefown li lejhom tkun qed issir it-telefonata;*
- (b) L-isem/ismijiet u l-indirizz(i) ta' l-abbonat(i) jew l-utent(i) irregisrat(i);*

(3) Rigward l-Aċċess għall-Internet, E-mail bl-Internet u Telefonija bl-Internet:

- (a) It-Tikketta tal-Konnessjoni jew l-ID ta' l-Utent tar-recipjent(i) tal-komunikazzjoni maħsub(a);*
- (b) L-isem/ismijiet u l-indirizz(i) ta' l-abbonat(i) jew l-utent(i) irregistrat(i) li huwa/huma r-recipjent(i) tal-komunikazzjoni maħsub(a).*

c) Dejta meħtieġa biex jiġu identifikati d-data, il-hin u t-tul ta' komunikazzjoni:

(1) Rigward it-Telefonija fuq Netwerk Fissa u t-Telefonija Mobbli:

- (a) Id-data u l-hin tal-bidu u t-tmiem ta' komunikazzjoni.*

(2) Rigward l-Aċċess għall-Internet, E-mail bl-Internet u Telefonija bl-Internet:

- (a) Id-data u l-hin tal-bidu u t-tmiem ta' sessjonijiet fuq l-internet ibbażati fuq żona ta' hin partikolari.*

d) Dejta meħtieġa biex jiġi identifikat it-tip ta' komunikazzjoni;

(1) Rigward it-Telefonija fuq Netwerk Fissa:

- (a) Is-servizz tat-telefown użat, eż. bil-leħen, telefonata konferenza, faks u servizzi ta' messaġġi.*

(2) Rigward it-Telefonija Mobbli:

- (a) Is-servizz tat-telefown użat, eż. bil-leħen, telefonata konferenza, Servizz ta' Messaġġi Qosra (Short Message Service: SMS), Servizz ta' Medja Mtejba (Enhanced Media Service: EMS) jew*

Servizz Multimedjali (Multi-Media Service: MMS).

e) Dejta meħtieġa biex jiġi identifikat il-meżz ta' komunikazzjoni jew il-meżz ta' komunikazzjoni maħsub:

(1) Rigward it-Telefonija Mobbli:

(a) L-Identità ta' l-Abbonat ta' Mowbajl Internazzjonali (IMSI) ta' min iċempel u min jirċievi t-telefonata;

(b) L-Identità ta' l-Apparat ta' Mowbajl Internazzjonali (IMEI) ta' min iċempel u min jirċievi t-telefonata;

(2) Rigward l-Aċċess għall-Internet, E-mail bl-Internet u Telefonija bl-Internet:

(a) In-numru tat-telefown li jċempel għal aċċess dial-up;

(b) Il-linja ta' l-abbonat digħitali (DSL) jew identifikatur tal-lok ieħor ta' l-originatur tal-komunikazzjoni;

(c) L-indirizz tal-kontroll ta' l-aċċess tal-medja (MAC) jew identifikatur ieħor tal-magna ta' l-originatur tal-komunikazzjoni.

f) Dejta meħtieġa biex jiġi identifikat il-lok fejn ikun jinsab l-apparat ta' komunikazzjoni mobbli:

(1) It-tikketta tal-lok (Cell ID) fil-bidu u t-tmiem tal-komunikazzjoni;

(2) Traċċar tad-dejta bejn Cell Ids u l-lok ġeografiku tagħhom fil-bidu u t-tmiem tal-komunikazzjoni.

EXPLANATORY STATEMENT

1. Background

At the Justice and Home Affairs Council of 29 and 30 April 2004, France, the United Kingdom, Ireland and Sweden submitted a joint proposal¹ for a framework decision on the retention of communications data. The background to the initiative was a declaration on combating terrorism² adopted by the European Council on 25 March 2004, in which the Council was instructed to examine measures for establishing rules on the retention of communications traffic data by service providers.

The aim of the proposal is to harmonise judicial cooperation in criminal matters by approximating Member States' legislation on the retention of data processed and stored by providers of a publicly available electronic communications service for the purpose of prevention, investigation, detection and prosecution of crime or criminal offences including terrorism.

Parliament unanimously rejected this Council proposal for a framework decision on data retention at its part-sessions in June and September 2005. Parliament took the view that the Council had chosen the wrong legal basis. The Council, making use of its sole legislative power in accordance with Title VI of the Treaty on European Union (TEU), cited Article 31(1)(c) in conjunction with Article 34(2)(b) TEU. In common with the legal services of the Council and Commission, Parliament takes the view that Article 95 of the EC Treaty is the correct legal basis. This would mean that Parliament is fully integrated into the legislative process with the power of codecision.

On 21 September 2005 the Commission submitted its own proposal for a directive on data retention pursuant to Article 95 of the EC Treaty, thus providing the basis for negotiations with the Council. Discussions between the Council and Parliament were intensified, even though the Council stands by its intention to push through its framework decision.

In addition to the formal question of competence, Parliament had expressed considerable concerns regarding the substance of the framework decision on data retention. These concerns have been addressed to some extent in the Commission's draft directive.

The Committee on Civil Liberties, Justice and Home Affairs defined its position on the draft directive on 24 November.

¹ Council document 8958/04 of 28 April 2004.

² Council document 7764/04 of 28 March 2004.

2. Position following the presentation of the Commission draft

a. substance

The Commission's draft directive on data retention lays down the following system:

<i>Scope</i>	Traffic data on fixed and mobile telephony, internet , e-mail and IP telephony – location data and unsuccessful calls included
<i>Purpose of retention</i>	Prevention, detection, investigation and prosecution of serious crime, such as terrorism and organised crime
<i>Authorities to have access</i>	Competent authorities determined by MS
<i>Access to data</i>	Not included
<i>Retention periods</i>	12 months telephony, 6 months internet
<i>Costs</i>	Reimbursement of demonstrated additional costs as a consequence of the Directive
<i>Flexibility under Article 15 (1) of Directive 2002 (58)</i>	Flexibility: it allows the use of data retention for other purposes – but harmonised dataset for combating serious crime
<i>Data protection provisions</i>	Not necessary – covered by existing Directives (95/46 and 2002/58)
<i>Penal sanctions</i>	Not included, covered by Framework Directive on attacks against information systems and data protection Directives
<i>Comitology procedure to update list of data</i>	Included
<i>Review clause</i>	Three years
<i>Data to be retained (Annex)</i>	

b. form

The Commission proposal on data retention was forwarded to Parliament on 21 September. It had thus been available to the committee for just two months when the vote was held. The British Council Presidency let it be known that it was interested in seeing a compromise system adopted at first reading before the end of 2005. The Conference of Presidents confirmed that Parliament was also interested in reaching a compromise by the end of the year. Parliament set to work immediately in order to formulate a common position and make its contribution to building a compromise. The last opportunity to adopt a compromise at first reading is the part-session week from 12 to 15 December. Owing to translation deadlines and other factors, this extremely accelerated legislative procedure has meant that there was little time for discussion and translations were sometimes unavailable. There was also no time for a technology assessment or for a study on the impact on the internal market. Bearing in mind the measures and plans aimed at better regulation at European level, it is to be hoped that the procedure used for debating data retention will not become the rule.

In order to make it possible to vote on a proposal in the Committee on Civil Liberties, Justice and Home Affairs on 24 November and to resolve the many controversial issues, a working

party on data retention held regular meetings. The rapporteur, shadow rapporteurs, draftsmen for IMCO and ITRE, committee chair and secretariat, coordinators and staff drew up compromise amendments within this working party in a space of seven weeks. Regular meetings were held with the Council and Commission during this time in order to discuss the state of affairs in the various institutions.

3. Vote in the Committee on Civil Liberties, Justice and Home Affairs

On 24 November 2005 the Committee on Civil Liberties, Justice and Home Affairs formulated its position on the Commission's draft directive with a clear three-quarters majority. Prior to the vote, members from the PPE-ED, PSE and ALDE Groups were able to agree on 21 compromise amendments, replacing a large part of the 250 amendments tabled.

<i>LIBE position based on compromise amendments (committee vote, 1st reading)</i>	
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<i>Scope</i>	Traffic data on fixed and mobile telephony – location data (at the start of a call) (Comp. AM 9: opt-in system for MS for unsuccessful calls Respect private life/protection of personal data in access/use of data (Comp. AM 1)
<i>Purpose of retention</i>	Detection, investigation, and prosecution of specified forms of serious criminal offences to define this list of offences is taken which is used for the European Arrest Warrant. ' prevention ' is excluded because it is a vague concept and makes the retained data more vulnerable from abuses (Comp. AM 1)
<i>Authorities to have access</i>	Access by judicial authorities and other authorities responsible for detection, investigation and prosecution of serious criminal offences (following the list of the European Arrest Warrant). In any case, national authorities must be subject to judicial authorisation . (Comp. AM 2, 4)
<i>Access to data</i>	A provision on conditions on access to the data has been introduced by the committee: - only for specific purposes, defined by the directive and on a case by case basis - The reasons must be necessary/proportionate - erase data when no longer necessary / when inaccurate - providers are prohibited to use data - any accessing of retained data is recorded - confidentiality/integrity of data shall be ensured - data can only be transmitted to third countries by means of an International Agreement, on the basis of Article 300, par. 3, subparagraph. 2

	of the Treaty (Comp. AM 5)
<i>Retention periods</i>	6 -12 months for everything. After such period, all data must be erased. (Comp. AM 12)
<i>Costs</i>	Member States will ensure the reimbursement of demonstrated additional costs for telecom industry (including 'investment and operating costs', also costs resulting from further modifications of the directive). *in the Council the tendency is to exclude reimbursement of the directive. (Comp. AM 18)
<i>Flexibility under Article 15 (1) of Directive 2002 (58)</i>	MS shall refrain from adopting legislative measures in the sectors covered by the Directive (AM 224)
<i>Data protection provisions</i>	Additional provisions on data security, proposed in line with existing Directives (see a detailed list in the compromise amendment) (Comp. AM 6)
<i>Penal sanctions</i>	Effective, proportionate and dissuasive penalties for infringements of the national provisions adopted to implement Directive. (Comp. AM 15)
<i>Comitology procedure to update list of data</i>	Not included
<i>Review clause</i>	Review after 2 years of its implementation and periodic review every 3 years. (Comp. AM 21)
<i>Data to be retained (Annex)</i>	<p>Committee has voted in favour of placing the Annex into the main text</p> <p>Includes pre-paid anonymous cards/services, the date and time of the initial activation of the card and the label (Cell ID) from which the activation was made"</p> <p>- "types" of data to be retained:</p> <p>FIXED PHONE:</p> <ul style="list-style-type: none"> - Name/address of person who calls + phone number - Name/address of person/s who receive the call + phone number - Date and time of the start and end of the conversation <p>MOBILE PHONE:</p> <ul style="list-style-type: none"> - Name/address of person who calls + phone number - Name/address of person/s who receive the call + phone number - Date and time of the start and end of the conversation

	<ul style="list-style-type: none"> - international mobile subscriber Identity (IMSI) = sim card - location label at the start of the communication <p>INTERNET:</p> <ul style="list-style-type: none"> - IP address of computer - Telephone number connecting to the internet - Name/address of subscriber - Date / time of log-in and log-off - ADSL-calling telephone number for dial-up access and the digital ADSL subscriber <p>(Comp. AM 8)</p>
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These amendments adopted by a majority show that Parliament has been perfectly able to agree on significant points relating to data retention across the political groups. The Council has not yet achieved a similar agreement, at least at the time of writing. We must thus await developments in the Council. The rapporteur takes the view, however, that there is no leeway for substantial changes to the compromise amendments tabled.

4. Trends in the formation of opinion within the Council

In line with the vote in the Committee on Civil Liberties, Justice and Home Affairs on 24 November, Parliament's position differs from the tendency of views within the Council on the following issues:

	European Parliament	Tendency of negotiations in Council
Length of retention	6-12 months for all (telephony and internet)	6 months for internet, 6-24 months for telephony
Scope	Uses the European Arrest Warrant definition of "serious crime" (catalogue + 3 years imprisonment),	All crimes are included
Cost reimbursement	Mandatory for all additional costs that the Directive pose + costs related to data protection requirements,	An optional national scheme
Unsuccessful calls	An opt-in where MS can choose to oblige telecoms	Mandatory retention of unsuccessful calls
Penal sanctions	Criminal sanctions for misuse of the data	Against

28.11.2005

MINORITY OPINION

pursuant to Rule 48(3) of the Rules of Procedure
Giusto Catania, Ole Krarup, Sylvia-Yvonne Kaufmann and Kathalijne Maria
Buitenveld

We reject this report, since it fails to make the necessary political and legal corrections to the proposal for a directive on the 'retention of data processed in connection with the provision of public electronic communication services'.

The legislation proposed by the Commission contravenes the proportionality principle even with the amendments contained in this report. Moreover, it is neither necessary nor effective. The proposed retention period is far too long, and the types of data to be retained are too wide-ranging. The definition of the competent authorities which are to have access to the data is imprecise, and access for intelligence services is not excluded. Inadequate provision is made for control mechanisms for data security.

The proposal for a directive seriously impinges on the fundamental rights of citizens and we cannot support it. Union citizens must not be placed under general suspicion. The Council and Commission have so far failed to provide proof that serious criminal offences can indeed be more successfully investigated by retaining vast amounts of communications data of all kinds.

Bearing in mind that introducing this measure would be extremely cost-intensive, it is preferable to invest this money in more effective measures to combat serious crime, such as targeted investigations and improved cooperation between law enforcement authorities.

23.11.2005

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council on the retention of data processed in connection with the provision of public electronic communication services and amending Directive 2002/58/EC
(COM(2005)0438 – C6-0293/2005 – 2005/0182(COD))

Draftswoman: Angelika Niebler

SHORT JUSTIFICATION

Background

On 21 September 2005 the Commission published a proposal for a directive on the retention of data processed in connection with the provision of public electronic communication services and amending Directive 2002/58/EC. In so doing the Commission has presented, on the basis of Article 95 of the EC Treaty, a deliberate counter-proposal to the Council's Draft Framework Decision on data retention drafted in 2004 by France, Ireland, the UK and Sweden.¹

This development is a welcome one from the European Parliament's point of view. The Commission has chosen a legal basis which allows Parliament the right of codecision on this issue of great importance both for citizens and businesses. By contrast, the Framework Decision, based on Articles 31(1)(c) and 34(2)(b) of the EU Treaty, gives Parliament only the right to be consulted.

In terms of substance, the Commission's proposed directive and the Draft Framework Decision tend in the same direction. Both seek to improve the fight against terrorism and serious crime by requiring the providers of public communication networks to retain certain data in accordance with harmonised provisions.

The data covered are traffic and location data within the meaning of Article 2 of Directive 2002/58/EC, including user and subscriber data. This means that the data to be retained are the following: all information about place, time, duration and number called in telephone

¹ DOC. 8958/04 of 28 April 2004.

conversations, faxes, e-mails, text messages and Internet protocols. The content of conversations is specifically excluded.

Evaluation

The Member States currently have different regulations governing retention times for individual items of communications data. From the point of view of effective cross-border action against terrorism and crime this is undoubtedly a disadvantage, since criminals increasingly operate across borders and use modern means of communication to do so. The proposed directive may accordingly become an important instrument in the fight against crime.

Your draftswoman considers, however, that it raises a number of serious issues which should be addressed by the Committee on Industry, Research and Energy in particular so as to take account of the specific aspects of the communications and information society on which the directive touches.

Like the Council in its above-mentioned Draft Framework Decision, the Commission uses a very broad brush to demonstrate that the proposed measures will actually lead to an improvement in the fight against crime and terrorism. It is, however, essential for this to be proved in order to justify the significant effects and burdens on citizens and businesses. It appears, however, that the data requested by the prosecuting authorities in practice are not normally more than 3 months old. The legal retention times should therefore be adapted to take account of actual needs.

For telecoms firms the proposal would mean having to retain an inconceivably large amount of data. To store, archive and make available this volume of data would require expensive system adjustments. Calculations within the industry estimate that these adjustments would entail costs in the hundreds of millions of euro for some companies, not counting the follow-on costs for system maintenance and servicing.

As well as reducing retention time, then, it is also necessary to cut down the number of types of data to be retained (as set out in the Annex). Calls which fail to establish a connection, which are covered by the Commission proposal and would lead to major additional costs especially in fixed network telephony – without yielding any crime-fighting benefits, are an obvious candidate for the axe, as are data relating to the mobile phone identity, the MAC address or the location during or at the end of a mobile communication.

It causes your draftswoman serious concern that under Articles 5 and 6 of the proposal, the Annex and thus the substantive provisions of the directive governing the types of data to be retained, may be altered using the comitology procedure. This would mean that Parliament was entirely excluded from decisions on this sensitive issue. The provisions to this effect should therefore be deleted.

The requirement, in Article 9 of the proposal, for Member States to submit statistics relating to data retention, should not lead to extra bureaucratic demands on businesses, though in fact these statistics could also be used to provide evidence of the number of cases in which the requests actually led to successful investigations.

Finally, on this issue of great public sensitivity, Parliament should not allow itself to be hustled into action. Understandable though the desire is to conclude this legislative procedure as quickly as possible, stress must be laid on the importance of thoughtful debate.

Furthermore, in the interest of the credibility of the European Union we must avoid a situation where work is under way simultaneously on two legal acts trying to achieve the same objective. In your draftswoman's view, the Council should therefore in future concern itself exclusively with the directive proposed by the Commission.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
	Amendment 1 RECITAL 12
(12) The categories of information to be retained reflect an appropriate balance between the benefits for the prevention, investigation, detection, and prosecution of the serious offences involved and the level of invasion of privacy they will cause; the applicable retention period of one year , respectively six months where data relate to electronic communications taking place using solely the Internet Protocol, also strikes a reasonable balance between all the interests involved.	(12) The categories of information to be retained reflect an appropriate balance between the benefits for the prevention, investigation, detection, and prosecution of the serious offences involved and the level of invasion of privacy they will cause; the applicable retention period of six months , respectively three months where data relate to electronic communications taking place using solely the Internet Protocol, also strikes a reasonable balance between all the interests involved.
<i>Justification</i>	
<p><i>A maximum period of six months is in keeping with the proportionality principle, given that almost all investigations are dealt with using data less than six months old.</i></p>	
	Amendment 2 RECITAL 13
(13) Given the fact that retention of data generates significant additional costs for electronic communication providers, whilst the benefits in terms of public security impact on society in general, it is appropriate to foresee that Member States reimburse demonstrated additional costs incurred in order to comply with the obligations	(13) Given the fact that retention of, and affording access to , data generates significant additional costs for electronic communication providers, whilst the benefits in terms of public security impact on society in general, it is appropriate to foresee that Member States ensure full reimbursement to all electronic

¹ Not yet published in OJ.

imposed on them as a consequence of this Directive.

communication providers for demonstrated additional costs incurred in order to comply with the obligations imposed on them as a consequence of this Directive.

Justification

The additional costs arising from a procedure intended to strengthen the security of the Member States must not be borne by operators.

Amendment 3 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 advise on these matters the Commission envisages *creating* a platform composed of representatives of the law enforcement authorities, associations of the electronic communications industry and data protection authorities. ***The Commission undertakes to consult the European Parliament on any possible adaptation of the provisions of this Directive.***

Justification

It is essential for Parliament to be involved in any revision of the directive, given the potential risk that fundamental freedoms and rights might be violated.

Amendment 4 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

(16) It is essential that Member States provide legislative measures to ensure that data retained under this Directive are only provided to ***and used by*** 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

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.

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.

Justification

Respect for fundamental freedoms and rights demands that national authorities alone be allowed to make use of the data concerned.

Amendment 5
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

Justification

The comitology procedure proposed by the Commission, whereby representatives of the Commission and the Member States may add to the list of the data to be retained without any participation by the European Parliament or by businesses affected, is unacceptable. Any extension of the types of data to be retained is an interference in fundamental rights which should be subject to review by Parliament. Accordingly this recital should be deleted.

Amendment 6
RECITAL 19 A (new)

19a. The Member States should ensure that the implementation of this Directive takes place following consultations with the business sector, particularly as regards feasibility and cost of retention. In view of the fact that retention entails a practical and financial effort from businesses, the Member States should guarantee full compensation for additional costs incurred by businesses as a result of obligations or

*commitments relating to the transposition
of this Directive.*

Justification

Combating crime and guaranteeing public security are core duties of the modern state: accordingly, such measures must be fully funded from the public purse, and not at the expense of business, otherwise the attractiveness of Europe as a business location will be diminished. The full (investment and operational) costs of all obligations arising out of this Directive must therefore be entirely borne by the Member States. The same applies to the compilation of statistics, which should primarily be the task of the Member States.

Amendment 7
ARTICLE 1, PARAGRAPH 2

2. This Directive shall apply to traffic and location data of both private and legal persons, as well as the related data necessary to identify the subscriber or registered user. It shall not apply to the content of electronic communications, including information consulted using an electronic communications network.

2. Since this Directive provides for derogations, its application shall be regularly reviewed under the supervision of the European Parliament. The European Parliament must have the information required to enable it to establish that application of this Directive does not contravene respect for the Charter of fundamental rights of the European Union, especially as regards the processing of personal data and the protection of privacy in the electronic communications sector.

This Directive shall apply to traffic and location data of both private and legal persons, as well as the related data necessary to identify the subscriber or registered user. It shall not apply to the content of electronic communications, including information consulted using an electronic communications network.

Justification

It is essential for Parliament to be involved in any revision of the directive, given the potential risk that fundamental freedoms and rights might be violated.

Amendment 8
ARTICLE 3, PARAGRAPH 1

1. By way of derogation to Articles 5, 6 and 9 of Directive 2002/58/EC, Member States shall adopt measures to ensure that data **which** are generated or processed by providers of publicly available electronic communications services or of a public communications network within their jurisdiction in the process of supplying communication services **are retained in accordance with the provisions of this Directive.**

1. By way of derogation to Articles 5, 6 and 9 of Directive 2002/58/EC, Member States shall adopt measures to ensure that, **in cases where a connection was successfully established, data for the purpose set out in Article 1(1) are retained in accordance with the provisions of this Directive where they** are generated or processed by providers of publicly available electronic communications services or of a public communications network within their jurisdiction in the process of supplying communication services.

Justification

The amendment to paragraph 1 makes it clear that data retention can only be required when it is generated or processed in the course of the provision of communications services, since such a requirement might otherwise mean that services which do not generate certain types of data (e.g. prepaid telephony services) could no longer be supplied. Rendering such services impossible to supply or placing them under a disproportionate burden would reduce the attractiveness of the whole of Europe as a location for business, and would be in conflict with the Lisbon objectives.

Amendment 9 ARTICLE 3, PARAGRAPH 1 A (new)

1a. The Member States may provide, having regard to necessity and proportionality, that paragraph 1 shall not apply to providers of publicly available electronic communications services and operators of a public communication network, taking into account their market share, number of their subscribers, and the size of the networks in question in proportion to the size of the market.

Justification

Small service providers would be unable to comply with the proposed comprehensive data retention obligation even given full compensation for costs, since they would be forced to alter their systems and business procedures as well having to field regular queries from the authorities. This would not be affordable and would kill off small and medium-sized service providers, which in turn would have serious negative consequences for the attractiveness of

Europe as a business location, since a large proportion of Europe's innovative power resides with SMEs.

Amendment 10
ARTICLE 3, PARAGRAPH 2

2. Member States shall adopt measures to ensure that data retained in accordance with this Directive are only provided to the competent national authorities, in specific cases and in accordance with national legislation, for the purpose of the prevention, investigation, detection and prosecution of serious criminal offences, such as terrorism and organised crime.

2. Member States shall adopt measures to ensure that data retained in accordance with this Directive are only provided to ***and used by*** the competent national authorities, in specific cases and in accordance with national legislation, for the purpose of the prevention, investigation, detection and prosecution of serious criminal offences, such as terrorism and organised crime. ***The competent national authorities must be in a position to give reasons for their transmission requests on the understanding that the contractual relationship between the provider and its customer must not be undermined and respect for the Charter of fundamental rights of the European Union must not be contravened, especially as regards the processing of personal data and the protection of privacy in the electronic communications sector.***

Justification

The contractual relationship between an operator and its customer must not be altered by these data retention measures. The authorities concerned have to be able to prove that their requests will be of use from the point of view of preventing, investigating, detecting, or prosecuting serious criminal offences such as terrorism and organised crime.

Amendment 11
ARTICLE 4, INTRODUCTORY PART

Member States shall ensure that the following categories of data are retained under this Directive

Member States shall ensure that, ***in cases where a successful connection was established,*** the following categories of data are retained under this Directive ***for the purpose described in Article 1(1), provided that they are generated or processed in the course of the provision of communications***

services by providers of publicly available electronic communications services or of a public communications network:

Justification

Telecoms firms already retain many of the types of data called for in the proposed directive. The extended data retention requirement would, however, entail significant costs, since existing data banks would have to be expanded and adjusted. The retention requirement should therefore apply only where a connection was successfully established.

Amendment 12
ARTICLE 4, POINT (A)

- | | |
|---|---|
| (a) data necessary to trace and identify the source of a communication; | (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:
(a) The Internet Protocol (IP) address, whether dynamic or static, allocated by the Internet access provider to a communication;
(b) The User ID of the source of a communication;
(c) Name and address of the subscriber or registered user to whom the IP address, Connection Label or User ID was allocated at the time of the communication. |
|---|---|

Amendment 13
ARTICLE 4, POINT (B)

- | | |
|--|--|
| (b) data necessary to trace and identify the destination of a communication | (b) data necessary to identify the destination |
|--|--|

of a communication:

(1) *Concerning fixed network telephony:*

(a) *The called telephone number or numbers;*

(2) *Concerning mobile telephony:*

(a) *The called telephone number or numbers;*

(3) *Concerning Internet access :*

(a) *The Connection Label or User ID of the intended recipient(s) of a communication;*

Amendment 14

ARTICLE 4, POINT (C)

(c) data necessary to identify the date, time and duration of a 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:*

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

Amendment 15

ARTICLE 4, POINT (D)

(d) data necessary to identify the type of communication

(d) data necessary to identify the type of communication:

(1) *Concerning fixed network telephony:*

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

(2) *Concerning mobile telephony:*

(a) *The telephone service used, e.g. voice, Short Message Service (SMS).*

Amendment 16
ARTICLE 4, POINT (E)

- (e) data necessary to identify the communication device or what purports to be the communication device
- (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 party;***
- (2) ***Concerning Internet access:***
- (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.***

Justification

Mobile telephone serial numbers are issued more than once by the manufacturers and can be manipulated by users .

The machine ID number of a computer's network card cannot be reliably identified, since it may also be issued more than once by the manufacturers and can subsequently be easily manipulated by the user. The retention of these two types of data will not bring about a perceptible improvement in the fight against crime.

Amendment 17
ARTICLE 4, POINT (F)

- (f) data necessary to identify the location of mobile communication equipment.
- (f) data necessary to identify the location of mobile communication equipment:
- (1) ***The location label (Cell ID) at the start of the communication;***

Justification

The proposal that the Cell ID should be retained at the end as well as at the start of a call would entail significant additional costs. At present, only the location at the start of the call is retained in some Member States. In any case the Cell ID retained at the beginning of each new call makes it possible in retrospect to form a sufficiently accurate movement profile.

Amendment 18
ARTICLE 4, PARAGRAPH 2

*The types of data to be retained under the
abovementioned categories of data are
specified in the Annex.* **deleted**

Amendment 19
ARTICLE 5

Article 5 **deleted**

Revision of the annex

*The Annex shall be revised on a regular
basis as necessary in accordance with the
procedure referred to in Article 6(2).*

Justification

The comitology procedure proposed by the Commission, whereby representatives of the Commission and the Member States may add to the list of the data to be retained without any participation by the European Parliament or by businesses affected, is unacceptable. Any extension of the types of data to be retained is an interference in fundamental rights which should be subject to review by Parliament. Accordingly the provisions to this effect should be deleted.

Amendment 20
ARTICLE 6

Article 6 **deleted**

Committee

1. The Commission shall be assisted by a Committee composed of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, Article 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.

Justification

The comitology procedure proposed by the Commission, whereby representatives of the Commission and the Member States may add to the list of the data to be retained without any participation by the European Parliament or by businesses affected, is unacceptable. Any extension of the types of data to be retained is an interference in fundamental rights which should be subject to review by Parliament. Accordingly the provisions to this effect should be deleted.

Amendment 21 ARTICLE 7

Member States shall ensure that the categories of data referred to in Article 4 are retained for a period of **one year** from the date of the communication, with the exception of data related to electronic communications taking place using wholly or mainly the Internet Protocol. The latter shall be retained for a period of **six months**.

Member States shall ensure that the categories of data referred to in Article 4 are retained for a period of **six months** from the date of the communication, with the exception of data related to electronic communications taking place using wholly or mainly the Internet Protocol. The latter shall be retained for a period of **three months**. **At the end of the retention period, the data must be erased or made anonymous, in accordance with Directive 2002/58/EC.**

Justification

A maximum period of six months is in keeping with the proportionality principle, given that almost all investigations are dealt with using data no more than six months old.

Amendment 22 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 are retained in accordance with this Directive in such a way that **they** can be transmitted **in due course** upon **written** request, **stating reasons**, to the competent authorities.

Justification

The provisions of the proposed directive constitute a derogation from Articles 5, 6 and 9 of Directive 2002/58/EC. Consequently the data to be transmitted should be definitively specified. A procedure should also be provided for their transmission, in the interest of legal certainty and data protection. Past experience shows that transmission may cause delays for

technical reasons, so that transmission without delay is not always possible.

Amendment 23
ARTICLE 9, PARAGRAPH 1

Member States shall ensure that statistics on the retention of data processed in connection with the provision of public electronic communication services are provided to the *European Commission* on a yearly basis. Such statistics shall include

- the cases in which information has been provided to the competent authorities in accordance with applicable national law,
- the time elapsed between the date on which the data were retained and the date on which the competent authority requested the transmission of the data;
- the cases where requests for data could not be met.

Member States shall ensure that statistics on the retention of data processed in connection with the provision of public electronic communication services are provided to the **Commission and the European Parliament** on a yearly basis **by the competent authorities**. Such statistics shall include

- the cases in which information has been provided to the competent authorities in accordance with applicable national law,
- the time elapsed between the date on which the data were retained and the date on which the competent authority requested the transmission of the data;
- the cases where requests for data could not be met
- ***the cases in which requests for specific types of data led to, or significantly contributed to, successful investigations.***

Justification

The requirement set out in Article 9 of the proposal for Member States to submit statistics in connection with data retention should not lead to extra bureaucratic demands on businesses. However, such statistics could also be used as evidence of the number of cases in which requests actually led to successful investigations.

Amendment 24
ARTICLE 10

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.

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

Justification

The fact that the Commission proposal provides for the reimbursement to businesses of investment and operating costs is to be welcomed. The proposed amendment is purely for purposes of clarification. At the same time the reimbursement of costs is an important regulatory instrument for reducing requests by the prosecuting authorities to the minimum necessary, and preventing distortions of competition on the basis of differing reimbursement procedures.

Amendment 25 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 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 types of data set out in Article 4.***

Justification

In line with the proposed deletion of the comitology procedure in Article 5, an evaluation of all provisions of the directive, without distinction, should take place. Since the requirement of data retention is imposed on businesses and will entail significant costs for them, these costs should be taken into account in an evaluation of the directive.

Amendment 26 ARTICLE 12, PARAGRAPH 2

2. To that end, the Commission shall examine all observations communicated to it by the Member States or by the Working Party on the Protection of Individuals with regard to the Processing of Personal Data instituted by Article 29 of Directive 95/46/EC.

2. To that end, the Commission shall examine all observations communicated to it by the Member States, ***by the commercial sector*** or by the Working Party on the Protection of Individuals with regard to the Processing of Personal Data instituted by Article 29 of Directive 95/46/EC, ***together with any report drawn up by the European***

Parliament pursuant to Article 1 of this Directive.

Justification

It is essential for Parliament to be involved in any revision of the directive, given the potential risk that fundamental freedoms and rights might be violated.

Amendment 27
ANNEX

This annex deleted

Justification

The Annex should be deleted in its entirety and placed in Article 4. The list of data constitutes the substance of the proposed directive and not merely a technical detail. The nature of the data to be retained determines the usefulness, feasibility, cost and proportionality of data retention. Accordingly the data list should not form part of an Annex separate from the operative text of the directive but should appear directly in Article 4.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on the retention of data processed in connection with the provision of public electronic communication services and amending Directive 2002/58/EC
References	COM(2005)0438 – C6-0293/2005 – 2005/0182(COD)]
Committee responsible	LIBE
Opinion by Date announced in plenary	ITRE 15.11.2005
Enhanced cooperation – date announced in plenary	No
Drafts(wo)man Date appointed	Angelika Niebler 5.10.2005
Previous drafts(wo)man	
Discussed in committee	22.11.2005 23.11.2005
Date adopted	23.11.2005
Result of final vote	+: 37 -: 4 0: 1
Members present for the final vote	Ivo Belet, Jan Březina, Philippe Busquin, Jerzy Buzek, Joan Calabuig Rull, Pilar del Castillo Vera, Jorgo Chatzimarkakis, Giles Chichester, Den Dover, Lena Ek, Nicole Fontaine, Adam Gierek, Norbert Glante, Umberto Guidoni, András Gyürk, Fiona Hall, David Hammerstein Mintz, Ján Hudacký, Romana Jordan Cizelj, Werner Langen, Anne Laperrouze, Nils Lundgren, Eluned Morgan, Angelika Niebler, Reino Paasilinna, Umberto Pirilli, Miloslav Ransdorf, Vladimír Remek, Herbert Reul, Mechtild Rothe, Paul Rübig, Britta Thomsen, Patrizia Toia, Catherine Trautmann, Claude Turmes, Nikolaos Vakalis, Alejo Vidal-Quadras Roca, Dominique Vlasto
Substitute(s) present for the final vote	Avril Doyle, Erna Hennicot-Schoepges, Vittorio Prodi, Hannes Swoboda
Substitute(s) under Rule 178(2) present for the final vote	
Comments (available in one language only)	...

22.11.2005

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council on the retention of data processed in connection with the provision of public electronic communication services and amending Directive 2002/58/EC
(COM(2005)0438 – C6-0293/2005 – 2005/0182(COD))

Draftswoman: Charlotte Cederschiöld

SHORT JUSTIFICATION

As the Commission proposal is based on Article 95 of the Treaty - the Internal Market article - it is vital that the Committee on the Internal Market and consumer protection can deliver an opinion.

Data retention measures affect all parts of society with wide-ranging economic, social and industrial implications. Harmonising data retention provisions in the EU has severe implications not only for European consumers but also for European industry and ultimately the internal market. Unless harmonisation is carefully introduced, both citizens' fundamental rights and European competitiveness will be at risk.

Current situation

All the Member States have different regimes in place in terms of data retention periods, types of data to be retained and reimbursement for costs incurred for industry. A harmonised European approach could improve the situation if carefully designed while respecting the balance between all interests and affected parties.

Data retention represents a paradigm shift in the way society looks at traffic data. Under current laws electronic communications providers are only allowed to keep traffic data for specific legitimate business purposes and are obliged to erase traffic data once the purpose has been completed. Under the new proposal, operators would be required to store large quantities of new data specifically for law enforcement purposes which puts the European Union in a unique position, as no other democratic country in the world has introduced such far reaching obligations. This fact needs careful consideration, both in terms of privacy, competitiveness and security.

In the interest of better regulation it is questionable whether the EU should introduce such obligations at this stage without carefully examining the long-term consequences, with a thorough impact assessment. The system of data preservation and "quick freeze" could be a better way of enhancing cooperation between industry and law enforcement agencies and ought to be analysed from a consumer and internal market point of view.

The proposed comitology procedures are not acceptable – a wider solution has to be found, which includes all stakeholders that were not sufficiently consulted before the proposal was presented.

Impact on the internal market and European competitiveness

Heads of State and Government have repeatedly identified electronic communications as a cornerstone of the European economy: essential for sustainable growth and maximising employment. Any regulation, including data retention, must be carefully examined before it is introduced in order not to hamper competitiveness and development of EU businesses.

Costs

Successful collection of large amounts of data as foreseen in the proposed Directive is difficult and expensive. Trying to make sense of the different data formats and interpret them into something that is of value for law enforcement agencies is even more difficult.

Based on the volume of retained data, the cost will increase heavily due to changes in the design of the management systems, more powerful and sophisticated platforms, greater security measures, storage and support infrastructures as well as the necessary human resources to handle this type of systems.

It is obvious that data retention will put a heavy burden of cost on the European communications industry. The risk of a fragmented approach to the cost issue is obvious: If some Member States reimburse the electronic communications providers for data retention, while others don't, the internal market for communications services will suffer from grave distortions of competition.

Investments

European communications operators are currently rolling out next generation networks to meet the need for new e-services in both the private and public domain. Introducing data retention without a full cost compensation would force operators to dedicate resources to comply with the new regime, resources that would otherwise flow into building tomorrow's networks.

Competition

Irrespective of the question if full harmonisation is achieved within the EU, the fact remains that non-EU service providers will not be subjected to the same obligations and constraints. This will affect the competitive landscape and balance between the EU and competing economies. Many providers of electronic communications services, especially providers of Internet services, are based outside the EU while competing on the internal market. Service platforms can be set-up anywhere in the world: thus non-EU providers will even find themselves in a position to offer "*non-retention services*", and possibly build their business case on users' concern of their integrity and privacy. Far reaching data retention obligations

could deter European consumers from using European services.

In the case where an European operator provides Internet access, while the customer uses an e-mail provider in the US (e.g. Hotmail, Gmail, Yahoo), the European access provider does not have access to the traffic data as required by the Commission's proposal. In addition, many of the larger e-mail providers are based outside the EU and will in any case not be subject to the requirements.

Security

It might be possible to achieve high levels of information security, but a total security guarantee is virtually impossible to obtain. It will be paramount to safeguard that data stored are authentic and secured from any alteration, that access controls are strong and show a clearly auditable trail and chain of custody. The retention and storage of such large amounts of sensitive data will also face challenges at the software and network level (malware, spyware, spam, phishing) as well as non-internet based threats (for example the physical theft of data retention tapes).

Furthermore, the proposal lacks security provisions on proceedings once the information is collected in the Member State, if and how it can be transferred to other Member States as well as provisions forbidding the transfer of retained data to countries outside the EU. All these security aspects are a potential threat to the European Consumer.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Draft legislative resolution

Amendment 1
Paragraph 1 a (new)

- 1a. *Calls on the Commission, prior to the entry into force of this Directive, to commission an impact assessment study from an independent body representing all stakeholders, covering all internal market and consumer protection issues;***

Proposal for a directive

Text proposed by the Commission¹

Amendments by Parliament

Amendment 2
RECITAL 13

¹ OJ C ... / Not yet published in OJ.

(13) Given the fact that retention of data generates significant additional costs for electronic *communication* providers, whilst the benefits in terms of public security impact on society in general, it is appropriate to *foresee* that Member States reimburse demonstrated additional costs incurred in order to comply with the obligations imposed on them as a consequence of this Directive.

(13) Given the fact that the retention of data generates significant additional costs for electronic *communications* providers, whilst the benefits in terms of public security impact on society in general, *and in order to avoid distortions in the internal market*, it is appropriate to *provide* that *all* Member States *must ensure that providers of publicly available electronic communications services or of a public communications network are given full, harmonised reimbursement for* demonstrated additional costs incurred in order to comply with the obligations imposed on them as a consequence of this Directive.

Amendment 3
RECITAL 13 A (new)

(13a) Costs must be kept to a minimum in order to avoid putting EU companies at a competitive disadvantage as compared to non-EU companies.

Amendment 4
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; *in order* to advise on these matters *it is necessary* to create *a standing committee* of representatives of the *European Parliament*, law enforcement authorities, the electronic communications industry, *consumer protection organisations* and data protection authorities.

Amendment 5
RECITAL 18 A (new)

(18a) Since the security of data retained under this Directive is of paramount importance for the safeguarding of consumers' rights, Member States should ensure that the highest standards of data storage security are applied, in particular in the protection of data from alteration and unauthorized access and from internet and non-internet related threats.

Amendment 6
RECITAL 18 B (new)

(18b) The security treatment of data retained under this Directive must comply with the data protection provisions of Directive 2002/58/EC.

Amendment 7
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 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 criminal offences.

Justification

This proposal is related to Article 15 of the Directive on data protection in the electronic communications sector (2002/58) which states that Member States may adopt data retention rules "to safeguard national security..., defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system". The scope of the Commission proposal however is much more limited than the "mandate" given by Article 15 and should be extended. Data retention requirements are of primary importance to allow law enforcement measures and judicial proceedings to be taken against all forms of online crimes. Without a requirement to retain

data, authorities face significant obstacles in tracking illegal activities and identifying suspected infringers, and in taking actions to enforce offences and legal rights. In addition, the definition of “serious” may be subject to many different interpretations, which could create much legal uncertainty.

Amendment 8
ARTICLE 3

1. By way of derogation to Articles 5, 6 and 9 of Directive 2002/58/EC, Member States shall adopt measures to ensure that data which are **generated or** processed by providers of publicly available electronic communications services or of a public communications network within their jurisdiction in the *process* of supplying *communication* services are retained in accordance with the provisions of this Directive.

1. By way of derogation from Articles 5, 6 and 9 of Directive 2002/58/EC, Member States shall adopt measures to ensure that data which are processed **and stored** by providers of publicly available electronic communications services or of a public communications network within their jurisdiction in the *course* of supplying *communications* services are retained in accordance with the provisions of this Directive.

Justification

It is essential that the scope of the Directive is clearly defined: the word ‘generated’ being very broad and unclear it should be replaced by language which is already in use in European legislation. Processing is defined in the general Data Protection Directive (article 2b), while the Electronic Communication Directive on Data Retention refers to both processing and storing in its article 6.

Amendment 9
ARTICLE 3, PARAGRAPH 2

2. Member States shall adopt measures to ensure that data retained in accordance with this Directive are **only** provided to the competent national authorities, in specific cases and in accordance with national legislation, for the purpose of the prevention, investigation, detection and prosecution of *serious* criminal offences, **such as terrorism and organised crime.**

2. Member States shall adopt measures to ensure that data retained in accordance with this Directive are provided to the competent national authorities, in specific cases and in accordance with national legislation, for the purpose of the prevention, investigation, detection and prosecution of criminal offences.

Justification

The Commission proposal is too restricted compared to the "mandate" provided by Article 15 of the Directive on data protection in the electronic communications sector (2002/58) and should therefore be extended. Data retention requirements are of primary importance to allow law enforcement measures and judicial proceedings to be taken against all forms of online crimes. Without a requirement to retain data, authorities face significant obstacles in tracking illegal activities and identifying suspected infringers, and in taking actions to enforce offences and legal rights. In addition, the definition of "serious" may be subject to many different interpretations, which could create much legal uncertainty. Finally, this instrument must not prejudice any other Community/national measures for the enforcement of rights.

Amendment 10 ARTICLE 5

The Annex shall be revised on a regular basis as necessary in accordance with the procedure referred to in Article 6(2).

Amendment 11 ARTICLE 6

- 1. The Commission shall be assisted by a Committee composed of representatives of the Member States and chaired by the representative of the Commission.*
 - 2. Where reference is made to this paragraph, Article 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.*
 - 3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.*

Amendment 12 ARTICLE 7

Member States shall ensure that the categories of data referred to in Article 4 are retained for a period of one year from the date of the communication, *with the exception of data related to electronic*

Member States shall ensure that the categories of data referred to in Article 4 are retained for a period of one year from the date of the communication. ***Member States shall ensure that all data is erased at the***

communications taking place using wholly or mainly the Internet Protocol. The latter shall be retained for a period of six months.

end of this retention period.

Justification

The period of retention should be sufficiently long to enable national authorities to find evidence and prosecute law breakers. It can take a lot of time to conduct investigations into possible online infringements and some cases can involve complex online structures. It is therefore vital that the Commission's proposal provide that Member States implement procedures that offer enforcement bodies flexible and reliable means of ensuring that this critical evidence is stored for as long as possible in order to prepare a strong case.

Amendment 13

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 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.

Every request for data access between Member States must be accompanied by a guarantee that data retained under this Directive will be forwarded only to duly authorised law enforcement authorities and that they will not be forwarded to third countries.

Amendment 14

ARTICLE 10

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.

Member States shall ensure that providers of publicly available electronic *communications* services or of a public *communications* network are reimbursed for demonstrated additional *investment and operating* costs which they have incurred in order to comply with the obligations imposed on them as a consequence of this Directive, *including the demonstrated additional costs of data protection and any*

future amendments to it. The reimbursement should include demonstrated costs arising from making the retained data available to competent national authorities.

Justification

Compromise amendment as proposed by LIBE.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on the retention of data processed in connection with the provision of public electronic communication services and amending Directive 2002/58/EC
References	COM(2005)0438 – C6-0293/2005 – 2005/0182(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	IMCO 15.11.2005
Enhanced cooperation – date announced in plenary	
Drafts(wo)man Date appointed	Charlotte Cederschiöld 24.10.2005
Previous drafts(wo)man	
Discussed in committee	21.11.2005
Date adopted	22.11.2005
Result of final vote	+: 27 -: 5 0: 2
Members present for the final vote	Mia De Vits, Janelly Fourtou, Evelyne Gebhardt, Malcolm Harbour, Christopher Heaton-Harris, Anna Hedh, Edit Herczog, Anneli Jääteenmäki, Pierre Jonckheer, Henrik Dam Kristensen, Alexander Lambsdorff, Kurt Lechner, Lasse Lehtinen, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Bill Newton Dunn, Zita Pleštinská, Zuzana Roithová, Luisa Fernanda Rudi Ubeda, Heide Rühle, Leopold Józef Rutowicz, Andreas Schwab, Eva-Britt Svensson, József Szájer, Marianne Thyssen, Jacques Toubon, Bernadette Vergnaud, Phillip Whitehead, Joachim Wuermeling,
Substitute(s) present for the final vote	Charlotte Cederschiöld, Joel Hasse Ferreira, Othmar Karas, Joseph Muscat, Alexander Stubb
Substitute(s) under Rule 178(2) present for the final vote	
Comments (available in one language only)	...

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on the retention of data processed in connection with the provision of public electronic communication services and amending Directive 2002/58/EC				
References	COM(2005)0438 – C6-0293/2005 – 2005/0182(COD)				
Legal basis	Articles 251(2) and 95 EC				
Basis in Rules of Procedure	Rule 51				
Date submitted to Parliament	21.9.2005				
Committee responsible Date announced in plenary	LIBE 15.11.2005				
Committee(s) asked for opinion(s) Date announced in plenary	ITRE 15.11.2005	IMCO 15.11.2005			
Not delivering opinion(s) Date of decision					
Enhanced cooperation Date announced in plenary					
Rapporteur(s) Date appointed	Alexander Nuno Alvaro 26.09.2005				
Previous rapporteur(s)					
Simplified procedure – date of decision					
Legal basis disputed Date of JURI opinion					
Financial endowment amended Date of BUDG opinion					
European Economic and Social Committee consulted – date of decision in plenary					
Committee of the Regions consulted – date of decision in plenary					
Discussed in committee	5.9.2005	26.9.2005	5.10.2005	13.10.2005	24.10.2005
	14.11.2005	24.11.2005			
Date adopted	24.11.2005				
Result of final vote	+: -: 0:	33 8 5			
Members present for the final vote	Alexander Nuno Alvaro, Edit Bauer, Johannes Blokland, Mario Borghezio, Mihael Brejc, Kathalijne Maria Buitenweg, Maria Carlshamre, Michael Cashman, Giusto Catania, Charlotte Cederschiöld, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Rosa Díez González, Patrick Gaubert, Elly de Groot-Kouwenhoven, Adeline Hazan, Timothy Kirkhope, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Sarah Ludford, Edith Mastenbroek, Martine Roure, Inger Segelström, Antonio Tajani, Ioannis Varvitsiotis, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka				

Substitute(s) present for the final vote	Richard Corbett, Panayiotis Demetriou, Gérard Deprez, Lutz Goepel, Genowefa Grabowska, Jeanine Hennis-Plasschaert, Luis Herrero-Tejedor, Sylvia-Yvonne Kaufmann, Katalin Lévai, Bill Newton Dunn, Herbert Reul, Marie-Line Reynaud
Substitute(s) under Rule 178(2) present for the final vote	Sharon Margaret Bowles, Daniel Caspary, Othmar Karas, Gabriele Zimmer
Date tabled	28.11.2005 A6-0365/2005
Comments (available in one language only)	...