



24.10.2012

NOTICE TO MEMBERS

Subject: Petition 0590/2011 by Giovanna De Minico (Italian), on the interception of telecommunications over the internet

1. Summary of petition

The petitioner states that the Skype communication system uses non-decipherable encryption and also does not allow telephone traffic to be reconstructed, making it a particularly suitable communications tool for cross-border criminal networks.

On this point, the petitioner believes this system needs to be subject to the same obligations as are imposed upon mobile and fixed telephony companies, as laid down by Directive 2006/24/EC and Directive 2002/58/EC, which, for example, impose an obligation to retain the data necessary to identify a communication for at least 6 months.

2. Admissibility

Declared admissible on 26 September 2011. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 24 October 2012

The petitioner, an Italian national, states that providers of Voice-over-the-internet (VOIP) services (such as Skype) use non-decipherable encryption which prevents telephone traffic to be reconstructed, making it a particularly suitable communication tool for cross-border criminal networks.

On this point, the petitioner believes providers of such services should be subject to the same obligations as are imposed upon providers of publicly available electronic communications services and public communications networks (which includes mobile and fixed telephony)

under Directive 2006/24/EC¹, which imposes an obligation to retain the data necessary to identify a communication for between 6 months and 2 years. The petitioner further asks whether there is any intention to revise EU regulation in the area of telephone interception taking into account the nature of VOIP.

The Commission's observations

The Commission in its discussions with stakeholders, and in the context of the Data Retention Expert Group (set up under Commission Decision 2008/324/EC²), which adopted a position paper on the subject of internet telephony and the application of Directive 2006/24/EC,³ regularly considers the extent to which the Directive improves the effectiveness of law enforcement.

On the question of telephone interception, Directive 2006/24/EC explicitly excludes (Article 5(2)) the retention of any data revealing the content of communications.

At present there is no evidence, in terms of benefits for criminal investigation or the smooth functioning of the internal market, of any need for an EU action in these areas, but the Commission will keep the issue under review.

¹ Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services of public communications networks and amending Directive 2002/58/EC, OJ L105, 13.4.2006, p. 54.

² Commission decision 2008/324/EC of 25 March 2008 setting up the Platform on Electronic Data retention for the Investigation, Detection and Prosecution of Serious Crime group of experts, OJ L 111, 23.4.2008, p. 11-14.

³http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/police-cooperation/data-retention/experts-group/index_en.htm