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## **PROPOSAL FOR A RECOMMENDATION**

pursuant to Rule 49(1) of the Rules of Procedure

by Marco Cappato, Emma Bonino, Alima Boumediene-Thiery, Daniel Marc Cohn-Bendit, Gianfranco Dell'Alba, Benedetto della Vedova, Proinsias De Rossa, Giuseppe Di Lello, Olivier Dupuis, Raina Mercedes Echerer, Francesco Fiori, Marco Formentini, Koldo Gorostiaga, Ole Krarup, Caroline Lucas, Sarah Ludford, Mario Mauro, Patricia McKenna, José Maria Mendiluce, Pasqualina Napoletano, Bill Newton Dunn, Elena Ornella Paciotti, Marco Pannella, Eric Meijer, Béatrice Patrie, Elly Ploij-Van Gorsel, Jacques F. Poos, Didier Rod, Franz Turchi, Maurizio Turco, Gianni Vattimo, Luigi Vinci, Christian von Bötticher, Matti Wuori and Myrsini Zorba

on data protection in the electronic communications sector

**Recommendation of the European Parliament on data protection in the electronic communications sector**

*The European Parliament,*

- A. Having regard to the guarantees for the confidentiality of communications, the right to privacy and to data protection in the Charter of Fundamental Rights of the European Union, the European Convention on the Protection of Human Rights and Fundamental Freedoms, the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the constitutions of Member States;
- B. Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data which requires Member States to ensure the rights and freedoms of natural persons with regard to the processing of personal data, and in particular their right to privacy, in order to ensure the free flow of personal data in the Community;
- C. Having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the telecommunications sector which translated the data protection principles set out in Directive 95/46/EC into specific rules applicable to the electronic communications sector;
- D. Having regard to Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services;
- E. Having regard to Opinion 7/2000 of the Data Protection Working Party on the European Commission Proposal for a Directive of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector of 12 July 2000 COM (2000) 385;
- F. Having regard to Recommendation 3/99 of the Data Protection Working Party on the preservation of traffic data by Internet Service Providers for law enforcement purposes;
- G. Having regard to Opinion 5/2002 of the Data Protection Working Party on the Statement of the European Data Protection Commissioners of 11 September 2002 on mandatory systematic retention of telecommunication traffic data;
- H. Having regard to the Belgian proposal for a Draft Framework Decision on the retention of traffic data and on access to this data in connection with criminal investigations and prosecutions, and to the Council conclusions on information technologies and the investigation and prosecution of organised crime;
- 1. Recalls to the Council and to the Member States that such broad measures providing for mandatory systematic preventive retention of traffic and location data concerning

citizens' electronic communications for law enforcement purposes are a violation of art. 8 of the ECHR and of the jurisprudence of the European Court of Human Rights, and are consequently contrary to the relevant EU data protection directives and to the general principles of Community law, including those referred to in Article 6(1) and (2) of the Treaty on European Union;

2. Underlines that any measure imposed as an exception to data protection regulation by the EU or by Member States on telecommunications service providers, Internet service providers, and any other provider of electronic communications services, has to be in accordance with the guarantees provided by the ECHR and the related jurisprudence, the Charter of Fundamental Rights of the European Union, the relevant EU law on human rights and fundamental freedoms and with Article 15 (1) Directive 2002/58/EC.
3. Notes that no evidence, other than anecdotal, has been provided so far to justify that general traffic data retention measures would be a necessary and proportionate instrument in a democratic society in view of the objectives to be achieved ; considers, on the contrary, that the general retention of traffic data concerning all communications and electronic transactions by all citizens for the sole purpose of providing law enforcement authorities with material for investigations would seriously risk to undermine the very democracy it claims to defend;
4. Considers that less privacy invasive measures such as onward preservation of traffic data in specific cases are already available and more suitable to achieve the objectives pursued;
5. Urges Member States to ensure that measures for onward traffic data preservation by electronic communications service providers shall at least:
  - a) be clearly regulated by law;
  - b) not reveal, directly or indirectly, the content of the communications collected;
  - c) provide for sufficient legal and security safeguards against unlawful access and interception, disclosure or abuse;

The access by law enforcement authorities to data preserved shall at least:

- a) require judicial approval based upon the showing of a demonstrable need and the respect of a high legal standard of probativeness;
- b) be strictly limited to those purposes for which the EU law and the ECHR allow exceptions to the principle of confidentiality of communications
- c) be specific to a transaction or subscriber or user;

Data accessed by law enforcement authorities shall not be transferred to non-member state countries lacking the guarantees for the confidentiality of communications, the right to privacy and to data protection provided by the Charter of Fundamental Rights of the European Union and the European Convention on the Protection of Human Rights;

6. Recommends to the Council and to Member States to withdraw, abstain from adopting or change any proposal either at the national, European or international level, that is in contradiction with the above mentioned principles and provisions.