

WRITTEN QUESTION E-4517/08
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to the Commission

Subject: Privacy and electronic communications

Article 4 of the directive on privacy and electronic communications (2002/58/EC) states: 'The provider of a publicly available electronic communications service must take appropriate technical and organisational measures to safeguard security of its services ... these measures shall ensure a level of security appropriate to the risk presented.' Article 5 of the same directive, on the confidentiality of communications, adds: 'Member States shall ensure the confidentiality of communications ... through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned, except when legally authorised to do so in accordance with Article 15(1)'.

In the case of hypothetical listening of an illegal nature (something not mentioned in Article 15) by a public body of a Member State:

- does the Commission consider that the service provider could be held responsible for the listening if shown not to have complied with the obligations of Article 4 of the directive? If so, what penalty would be incurred and what compensation would have to be paid?
- does the Commission believe that a hypothetical case of listening by security forces without legal authorisation would be in breach of Article 5 of the directive? If so, what would be the legal consequences for the Member State concerned?