

EUROPEAN PARLIAMENT

2004



2009

Committee on Civil Liberties, Justice and Home Affairs

14.11.2005

PE 364.972v01-00

AMENDMENTS 1-22

Draft report

(PE 364.679v01-00)

Alexander Nuno Alvaro

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

Proposal for a directive (COM(2005)0438 – C6-0293/2005 – 2005/0182(COD) – amending act)

Draft legislative resolution

Text proposed by the Commission

Amendments by Parliament

Compromise amendment by Alexander Nuno Alvaro

Amendment 1

(Compromise amendment replacing Amendment 14 Alvaro, 100 Cavada)

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,

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 **publicly accessible electronic** communications network with respect to the processing and retention of certain data, **and to ensure that the rights to the respect for private life and to the protection of personal data in the access and use of these data are fully respected**, in

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such as terrorism and organised crime.

order to ensure that the data is available for the purpose of the investigation, detection and prosecution of serious criminal offences, **as referred to in Article 2 (2) of Council Framework Decision 2002/584/JHA.**

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 2

(Compromise amendment replacing Amendment 115 Ludford, 122 Kaufmann, 123 Roure, Kreissl-Dörfler, Lambrinidis and 18, 19 Alvaro)
Article 2, paragraph 2, point a) and a)a

a) 'data' means traffic data and location data, as well as the related data necessary to identify the subscriber or user;

a) 'data' means **records that have been made of** traffic data and location data, as well as the data necessary to identify the subscriber or user;

a)a 'competent national authorities' means the judicial authorities and national authorities responsible for the investigation, detection and prosecution of serious criminal offences.

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 3

(Compromise amendment replacing Amendment 20 Alvaro, 124 Reul, 125 Kaufmann, 126

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, 6 and 9 of Directive 2002/58/EC, Member States shall adopt measures to ensure that, *in the event of a successfully established connection, providers of publicly accessible electronic communications services or of a public communications network providing the service in question retain and make available* data which are generated *and* processed in the process of supplying communication services in accordance with the provisions of this Directive *by that provider who has offered the respective used electronic communication service.*

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 4

(Compromise amendment replacing Amendment 21 Alvaro, 132 Buitenweg, 134 Cavada)
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 the competent national authorities *through a push system*, in specific cases and in accordance with *the provisions of this Directive*, for the purpose of the investigation, detection and prosecution of serious criminal offences, as referred to in *Article 2(2) of Council Framework Decision 2002/584/JHA.*)

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 5

(Compromise amendment replacing Amendment 22 Alvaro, 141 Roure, Kreissl-Dörfler, Fava, 142 Kaufmann, 143 Cavada, 144 Lambrinidis, Mastenbroek)

Article 3 a (new)

Access to retained data

1. Each Member State shall ensure that access to data retained under this Directive is subject, as a minimum, to the following conditions and shall establish judicial remedies in line with the provisions of Chapter III of Directive 95/46/EC:

(a) data is accessed for specified, explicit and legitimate purposes by competent national authorities duly authorised and on a case by case basis and with respect for professional secrecy in accordance with national law;

(b) the competent national authorities do not process further the data in a way, which is incompatible with those purposes; any further processing of retained data by competent national authorities for other related proceedings should be limited on the basis of stringent safeguards;

(c) any access to the data by other government bodies or private companies is forbidden;

(d) access to retained data by any other third parties is illegitimate;

(e) the process to be followed in order to get access to retained data and to preserve accessed data is defined by each Member State in their national law; providers are not allowed to process data retained under this Directive for their own purposes;

(f) the data are adequate, relevant and are not excessive in relation to the purposes for

which they were accessed. Data are processed fairly and lawfully: 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;

(g) any accessing of retained data is recorded in a data processing register that enables identification of the requester, the data controllers, the personnel authorised to access and process the data, the judicial authorisation in question, the data consulted and the purpose for which they have been consulted,

(h) the competent national authorities keep the data in a form which allows data subjects to be identified only for as long as is necessary for the purpose for which the data were collected or processed further;

(i) the competent national authorities safeguard the confidentiality and integrity of the data, including respect for professional secrecy; they record any retrieval of the data and make these records available to the national data protection authorities;

(j) data accessed are accurate and, every necessary step is taken to ensure that personal data which are inaccurate, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified.

(k) data are erased once those data are no longer necessary for the purpose for which they are sought

(l) competent national authorities may only forward the data to third countries by means of an International Agreement concluded on the basis of Article 300 of the Treaty.

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 6

(Compromise amendment replacing Amendment 32 Alvaro, 191 Lambrinidis, 192 Roure, Kreissl-Dörfler, lambrinidis, Fava)

Article 3 b (new)

Data protection and data security

Each Member State shall ensure that data retained under this Directive is subject, as a minimum, to the rules implementing Article 17 of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and the free movements of such data, to the provisions of Article 4 of Directive 2002/58/EC and the following data security principles:

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

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

(c) the data shall be subject to appropriate technical and organisational measures to ensure that disclosure of, and access to data is undertaken only by authorised persons whose conduct is subject to oversight by a competent judicial or administrative authority;

(d) that providers keep log lists and undertake regular and systematic self-auditing to ensure that the applicable rules

on data protection are respected;
e) providers of publicly accessible electronic communications services or networks create a separate system of storage of data for public order purposes, the data of this separate system cannot under any circumstance be used for business purposes or other purposes not explicitly authorized under this Directive;

(f) competent national authorities may only forward the data to third countries by means of an International Agreement concluded on the basis of Article 300 of the Treaty

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

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 7

(Compromise amendment replacing Amendment 152 Roure, Kreissl-Dörfler, Lambrinidis, Fava, 154 Reul, 155 Roure, Kreissl-Dörfler, Lambrinidis, 163 Cavada, 164 Reul, 169 Reul)
Article 4, title

Categories of data to be retained

Categories *and types* of data to be retained

Or. en

Justification

Compromise amendment by Alexander Nuno Alvaro

Amendment 8

(Compromise amendment replacing Amendment 152, 154, 155, 163, 164, 169)
Article 4, paragraph 1 a (new)title

Types of data to be retained

1) Concerning Fixed Network Telephony

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

(a) The calling telephone number;

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

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

(a) The called telephone number or numbers;

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

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

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

d) Data necessary to identify the type of communication:

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

2) Concerning Mobile Telephony:

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

(a) The calling telephone number;

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

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

(a) The called telephone number or numbers;

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

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

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

d) Data necessary to identify the type of communication:

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

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

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

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

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

(a) The location label (Cell ID) at the start of the communication;

3) Concerning the Internet

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

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

(b) The Connection Label or telephone number allocated to any communication entering the public telephone network;

(c) Name and address of the subscriber or registered user to whom the IP address or Connection Label was allocated at the time of the communication.

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

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

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

(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;

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 9

(Compromise amendment replacing Amendment 172 Reul, 26 Alvaro)

Article 4, paragraph 2

The types of data to be retained under the abovementioned categories of data are

Member States shall be free to retain data concerning unsuccessful call attempts to secure a connection, within these categories

specified in the Annex.

of data *according to their national laws.*

Data that reveals the content of a communication must not be included.

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 10

(Compromise amendment replacing Amendment 27 Alvaro, 174-180 Cavada, Buitenweg, Cederschiöld, Mastenbroek, Gruber, Reul, Kaufmann, Roure, Kreissl-Dörfler)
Article 5 (comitology)

Revision of the annex

deleted

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

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 11

(Compromise amendment replacing Amendment 28 Alvaro, 182-186 Reul, Buitenweg, Cederschiöld, Mastenbroek, Gruber, Roure, Kreissl-Dörfler)
Article 6 (comitology)

Committee

deleted

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.*

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 12

(Compromise amendment replacing Amendment 29 Alvaro, 188 Kaufmann, 189, Roure, Kreissl-Dörfler)
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 **6-12 months** from the date of the communication; **thereafter, the data must be erased.**

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 13

(Compromise amendment replacing Amendment 33 Alvaro, 203 Reul, 205 Mastenbroek, Gruber, 206 Cavada)

Article 8

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

Member States shall ensure that the data *as specified in Article 4* are retained *by providers of publicly available electronic communications services or of a public communicating network*, 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 *national authorities of the Member States concerned* without undue delay.

The processing of the data takes place in accordance with the provisions of Article 17 of Directive 95/46/EC and Article 4 of Directive 2002/58/EC.

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 14

(Compromise amendment replacing Amendment 34 Alvaro)
Article 8, paragraph 1 a (new)

Member States shall ensure that the providers of publicly available electronic communication services or a public communication network concerned located on their territory set up a body to deal with requests for access to data.

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 15

(Compromise amendment replacing Amendment 204 Reul, 206 Mastenbroek, Gruber, 207 Cavada, 209 Roure, Kreissl-Dörfler, Lambrinidis, Fava, 33-34 and 35 Alvaro)
Article 8 a (new)

Penalties

1. Member States shall lay down penalties for infringements of the national provisions adopted to implement this Directive. The penalties shall be effective, proportionate and dissuasive.

2. Member States shall ensure that persons against whom proceedings are brought with a view to imposing penalties have effective rights of defence and appeal.

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 16

(Compromise amendment replacing Amendment 36 Alvaro, 209 Mastenbroek, Gruber, 210 Kaufmann, 211 Reul, 212 Lambrinidis, 214 and 215 Cederschiöld)
Article 9

Member States shall ensure that statistics on the retention of data processed in connection

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.

Such statistics shall not contain personal data.

with the provision of **publicly available** electronic communication services are provided to the European Commission on a yearly basis. Such statistics, **to be drawn up by the law enforcement authorities**, shall include

- the cases in which information has been provided to the competent authorities, **including intelligence and security services**, 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 **number of cases where the data requested did not directly lead to the successful conclusion of the relevant investigations;**
- **the number of cases where data requested was not available to the undertakings concerned.**
- **the cases where suspected and factual security breaches occurred.**

The European Commission shall submit these statistics to the European Parliament each year.

Such statistics shall not contain personal data.

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 17
(Compromise amendment replacing Amendment 36 Alvaro)
Article 9 a (new)

Each Member State shall nominate one independent official responsible directly to the European Data Protection Supervisor and the Commission to report the above stated statistics on a yearly basis.

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 18
(Compromise amendment replacing Amendment 217 Roure, Kreissl-Dörfler, Fava, 218
Ludford)
Article 10 (costs)

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

Member States shall ensure that providers of publicly available electronic communication services or of a public communication network are ***fully*** reimbursed for demonstrated additional ***investment and operating*** costs they have incurred in order to comply with obligations imposed on them as a consequence of this Directive ***including the additional costs of data protection and any future amendments to it. The reimbursement should include costs arising from making the retained data available to law enforcement authorities.***

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 19

(Compromise amendment replacing Amendment 226 Cavada, 227 Mastenbroek, Gruber, 228, 230 Roure, Kreissl-Dörfler, Lambrinidis, 39 and 40 Alvaro)

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 **two** years from the date referred to in Article 13(1) ***and in the light of the expiration of the retention measures adopted by Member States on the basis of this Directive***, the Commission shall submit to the European Parliament and the Council an evaluation of ***the effectiveness of the provisions contained in the Directive, and of the impact on fundamental rights of the data subjects. The evaluation will also considers the impact of the measures on economic operators and consumers, taking into account the statistical elements provided to the Commission pursuant to Article 9.***
The results of the evaluations will be publicly available

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 20

(Compromise amendment replacing Amendment 227 Cavada, 228 Mastenbroek, Gruber, 229, 230 Roure, Kreissl-Dörfler, Lambrinidis, 39 and 40 Alvaro)

◀ 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 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 **or by the European Data Protection Supervisor.**

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 21

(Compromise amendment replacing Amendment 42 Alvaro, 232 Reul)
Article 14 a, paragraph 1 (new)

Revision and Sunset Clause

(Confirmation of the Directive)

No later than two years after the date referred to in Article 13(1), this Directive shall be revised in accordance with the procedure laid down in Article 251 of the EC Treaty. In particular, the types of data retained and the retention periods shall be assessed to determine their relevance to the fight against terrorism and organised crime in the light of the statistics compiled pursuant to Article 9. The revision shall take place every two years.

Or. en

Justification

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Compromise amendment by Alexander Nuno Alvaro

Amendment 22

(Compromise amendment replacing Amendment 42 Alvaro)

Article 14 a, paragraph 2 (new)

One year after the second revision this Directive must be confirmed in accordance with the procedure laid down in Article 251 of the Treaty; otherwise, it shall cease to be operative.

Legal provisions enacted on the basis of the operative nature of this Directive shall not be affected.

Or. en

Justification

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