

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 or of public communications networks and amending Directive 2002/58/EC

#### *Article 1*

### **Subject matter and scope**

1 This Directive aims to harmonise Member States' provisions concerning the obligations of the providers of publicly available electronic communications services or of public communications networks with respect to the retention of certain data which are generated or processed by them, in order to ensure that the data are available for the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law.

2 This Directive shall apply to traffic and location data on both legal entities and natural persons and to 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.

#### *Article 2*

### **Definitions**

1 For the purpose of this Directive, the definitions in Directive 95/46/EC, in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)<sup>(1)</sup>, and in Directive 2002/58/EC shall apply.

2 For the purpose of this Directive:

- a 'data' means traffic data and location data and the related data necessary to identify the subscriber or user;
- b 'user' means any legal entity or natural person using a publicly available electronic communications service, for private or business purposes, without necessarily having subscribed to that service;
- c 'telephone service' means calls (including voice, voicemail and conference and data calls), supplementary services (including call forwarding and call transfer) and messaging and multi-media services (including short message services, enhanced media services and multi-media services);
- d 'user ID' means a unique identifier allocated to persons when they subscribe to or register with an Internet access service or Internet communications service;
- e 'cell ID' means the identity of the cell from which a mobile telephony call originated or in which it terminated;
- f 'unsuccessful call attempt' means a communication where a telephone call has been successfully connected but not answered or there has been a network management intervention.

### Article 3

#### **Obligation to retain data**

1 By way of derogation from Articles 5, 6 and 9 of Directive 2002/58/EC, Member States shall adopt measures to ensure that the data specified in Article 5 of this Directive are retained in accordance with the provisions thereof, to the extent that those data 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 the communications services concerned.

2 The obligation to retain data provided for in paragraph 1 shall include the retention of the data specified in Article 5 relating to unsuccessful call attempts where those data are generated or processed, and stored (as regards telephony data) or logged (as regards Internet data), by providers of publicly available electronic communications services or of a public communications network within the jurisdiction of the Member State concerned in the process of supplying the communication services concerned. This Directive shall not require data relating to unconnected calls to be retained.

### Article 4

#### **Access to data**

Member States shall adopt measures to ensure that data retained in accordance with this Directive are provided only to the competent national authorities in specific cases and in accordance with national law. The procedures to be followed and the conditions to be fulfilled in order to gain access to retained data in accordance with necessity and proportionality requirements shall be defined by each Member State in its national law, subject to the relevant provisions of European Union law or public international law, and in particular the ECHR as interpreted by the European Court of Human Rights.

### Article 5

#### **Categories of data to be retained**

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

- a data necessary to trace and identify the source of a communication:
  - (1) concerning fixed network telephony and mobile telephony:
    - (i) the calling telephone number;
    - (ii) the name and address of the subscriber or registered user;
  - (2) concerning Internet access, Internet e-mail and Internet telephony:
    - (i) the user ID(s) allocated;
    - (ii) the user ID and telephone number allocated to any communication entering the public telephone network;

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- (iii) the name and address of the subscriber or registered user to whom an Internet Protocol (IP) address, user ID or telephone number was allocated at the time of the communication;
- b data necessary to identify the destination of a communication:
  - (1) concerning fixed network telephony and mobile telephony:
    - (i) the number(s) dialled (the telephone number(s) called), and, in cases involving supplementary services such as call forwarding or call transfer, the number or numbers to which the call is routed;
    - (ii) the name(s) and address(es) of the subscriber(s) or registered user(s);
  - (2) concerning Internet e-mail and Internet telephony:
    - (i) the user ID or telephone number of the intended recipient(s) of an Internet telephony call;
    - (ii) the name(s) and address(es) of the subscriber(s) or registered user(s) and user ID of the intended recipient of the communication;
- c data necessary to identify the date, time and duration of a communication:
  - (1) concerning fixed network telephony and mobile telephony, the date and time of the start and end of the communication;
  - (2) concerning Internet access, Internet e-mail and Internet telephony:
    - (i) the date and time of the log-in and log-off of the Internet access service, based on a certain time zone, together with the IP address, whether dynamic or static, allocated by the Internet access service provider to a communication, and the user ID of the subscriber or registered user;
    - (ii) the date and time of the log-in and log-off of the Internet e-mail service or Internet telephony service, based on a certain time zone;
- d data necessary to identify the type of communication:
  - (1) concerning fixed network telephony and mobile telephony: the telephone service used;
  - (2) concerning Internet e-mail and Internet telephony: the Internet service used;
- e data necessary to identify users' communication equipment or what purports to be their equipment:
  - (1) concerning fixed network telephony, the calling and called telephone numbers;
  - (2) concerning mobile telephony:
    - (i) the calling and called telephone numbers;
    - (ii) the International Mobile Subscriber Identity (IMSI) of the calling party;
    - (iii) the International Mobile Equipment Identity (IMEI) of the calling party;

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- (iv) the IMSI of the called party;
  - (v) the IMEI of the called party;
  - (vi) in the case of pre-paid anonymous services, the date and time of the initial activation of the service and the location label (Cell ID) from which the service was activated;
- (3) concerning Internet access, Internet e-mail and Internet telephony:
- (i) the calling telephone number for dial-up access;
  - (ii) the digital subscriber line (DSL) or other end point of the originator of the communication;
- f data necessary to identify the location of mobile communication equipment:
- (1) the location label (Cell ID) at the start of the communication;
  - (2) data identifying the geographic location of cells by reference to their location labels (Cell ID) during the period for which communications data are retained.
- 2 No data revealing the content of the communication may be retained pursuant to this Directive.

### *Article 6*

#### **Periods of retention**

Member States shall ensure that the categories of data specified in Article 5 are retained for periods of not less than six months and not more than two years from the date of the communication.

### *Article 7*

#### **Data protection and data security**

Without prejudice to the provisions adopted pursuant to Directive 95/46/EC and Directive 2002/58/EC, each Member State shall ensure that providers of publicly available electronic communications services or of a public communications network respect, as a minimum, the following data security principles with respect to data retained in accordance with this Directive:

- (a) the retained data shall be of the same quality and 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, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure;
  - (c) the data shall be subject to appropriate technical and organisational measures to ensure that they can be accessed by specially authorised personnel only;
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- (d) the data, except those that have been accessed and preserved, shall be destroyed at the end of the period of retention.

#### *Article 8*

### **Storage requirements for retained data**

Member States shall ensure that the data specified in Article 5 are retained in accordance with this Directive in such a way that the data retained and any other necessary information relating to such data can be transmitted upon request to the competent authorities without undue delay.

#### *Article 9*

### **Supervisory authority**

1 Each Member State shall designate one or more public authorities to be responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to Article 7 regarding the security of the stored data. Those authorities may be the same authorities as those referred to in Article 28 of Directive 95/46/EC.

2 The authorities referred to in paragraph 1 shall act with complete independence in carrying out the monitoring referred to in that paragraph.

#### *Article 10*

### **Statistics**

1 Member States shall ensure that the Commission is provided on a yearly basis with statistics on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or a public communications network. Such statistics shall include:

- the cases in which information was 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.

2 Such statistics shall not contain personal data.

#### *Article 11*

### **Amendment of Directive 2002/58/EC**

The following paragraph shall be inserted in Article 15 of Directive 2002/58/EC:

1a. Paragraph 1 shall not apply to data specifically required by 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 or of public communications networks<sup>(2)</sup> to be retained for the purposes referred to in Article 1(1) of that Directive.

## Article 12

### Future measures

1 A Member State facing particular circumstances that warrant an extension for a limited period of the maximum retention period referred to in Article 6 may take the necessary measures. That Member State shall immediately notify the Commission and inform the other Member States of the measures taken under this Article and shall state the grounds for introducing them.

2 The Commission shall, within a period of six months after the notification referred to in paragraph 1, approve or reject the national measures concerned, after having examined whether they are a means of arbitrary discrimination or a disguised restriction of trade between Member States and whether they constitute an obstacle to the functioning of the internal market. In the absence of a decision by the Commission within that period the national measures shall be deemed to have been approved.

3 Where, pursuant to paragraph 2, the national measures of a Member State derogating from the provisions of this Directive are approved, the Commission may consider whether to propose an amendment to this Directive.

## Article 13

### Remedies, liability and penalties

1 Each Member State shall take the necessary measures to ensure that the national measures implementing Chapter III of Directive 95/46/EC providing for judicial remedies, liability and sanctions are fully implemented with respect to the processing of data under this Directive.

2 Each Member State shall, in particular, take the necessary measures to ensure that any intentional access to, or transfer of, data retained in accordance with this Directive that is not permitted under national law adopted pursuant to this Directive is punishable by penalties, including administrative or criminal penalties, that are effective, proportionate and dissuasive.

## Article 14

### Evaluation

1 No later than 15 September 2010, 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 further developments in electronic communications technology and the statistics provided to the Commission pursuant to Article 10 with a view to determining whether it is necessary to amend the provisions of this Directive, in particular with regard to the list of data in Article 5 and the periods of retention provided for in Article 6. The results of the evaluation shall be made public.

2 To that end, the Commission shall examine all observations communicated to it by the Member States or by the Working Party established under Article 29 of Directive 95/46/EC.

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## Article 15

### Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by no later than 15 September 2007. They shall forthwith inform the Commission thereof. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3 Until 15 March 2009, each Member State may postpone application of this Directive to the retention of communications data relating to Internet Access, Internet telephony and Internet e-mail. Any Member State that intends to make use of this paragraph shall, upon adoption of this Directive, notify the Council and the Commission to that effect by way of a declaration. The declaration shall be published in the *Official Journal of the European Union*.

## Article 16

### Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

## Article 17

### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 15 March 2006.

*For the European Parliament*

*The President*

J. BORRELL FONTELLES

*For the Council*

*The President*

H. WINKLER

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- (1) [OJ L 108, 24.4.2002, p. 33.](#)
- (2) [OJ L 105, 13.4.2006, p. 54.](#)'