



# Data retention directive: What the Council cherishes, the privacy advocates reject and the industry fears...

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# Before the directive...

- Art. 6 ePrivacy Dir.
- Art. 9 ePrivacy Dir.
- Art. 15 ePrivacy Dir.



# Campaign against data retention

- ❖ Civil Rights Organisations, Industry Players  
etc.:

“Data retention is no solution”

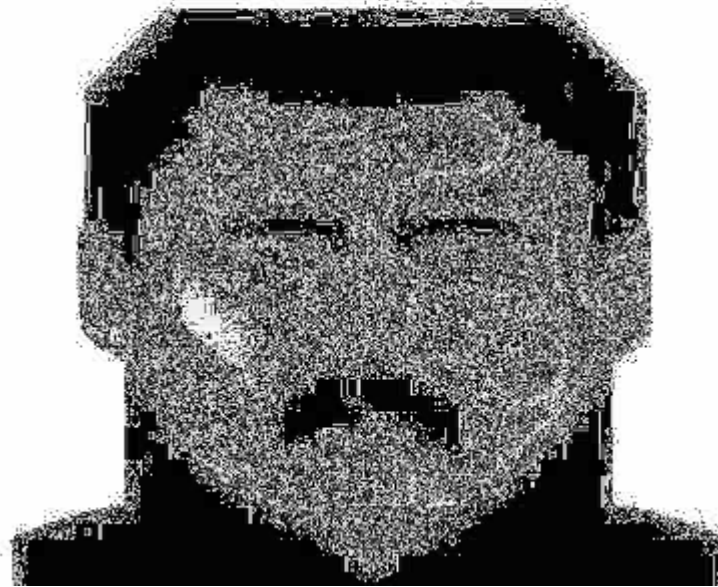
**data retention is no solution**

- ❖ Petition signed by 58265 people until  
14.12.2005.



# Campaign against data retention

They're Watching  
You





# Data retention directive

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

(O.J. L.105, 13.04.2006, p.54-63)



# Scope

[Harmonisation] of 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. (Art. 1(1) DRD)



# Serious Crime?

## ❖ Statement by the Council concerning Article 1:

“In defining ‘serious crime’ in national law Member States shall have due regard to the crimes listed in Article 2(2) of the Framework Decision on the European Arrest Warrant (2002/584/JHA) and crime involving telecommunication”.



# Who shall retain the data?

## Providers

- of publicly available electronic communications services or
- of public communications networks

💣 What does it mean?





# Who shall retain the data?

Quid...

- Webmail Service Providers?
- Internet Cafes?
- Hotels?
- University?
- Friends?



# What data are to be retained?

- ❖ **Traffic and location data** on both legal entities and natural persons and to the related data necessary to identify the subscriber or registered user.
- ❖ Including data relating to **unsuccessful call attempts**
- ❖ **No content data**
- ❖ **No data relating to unconnected calls**



# What data are to be retained?

- ❖ A detailed list of data to be retained is included in Art. 5 DRD and not in an Annex, as was initially proposed.
- ❖ No “Commitology Procedure” to revise the Annex



# What data are to be retained?

## Art. 5 DRD

- a) Data necessary to trace and identify the source of a communication;
- b) Data necessary to identify the destination of a communication;
- c) Data necessary to identify the date, time and duration of a communication;
- d) Data necessary to identify the type of communication;
- e) Data necessary to identify users' communication equipment or what purports to be their equipment;
- f) Data necessary to identify the location of mobile equipment.



# E-mail

➤ Art. 5(c)(2)(ii) DRD:

[...] data necessary to identify the date, time and duration of a communication, concerning [...] Internet e-mail: the date and time of the **log-in** and **log-off** of the **Internet e-mail service**, based on a certain time zone.



# Data retention & ePrivacy Dir.

Art. 11 DRD (amending Art. 15 ePrivacy Dir):

‘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 to be retained for the purposes referred to in Art. 1(1) of that Directive.’



# Data retention & ePrivacy Dir.

## ➤ Art. 15 ePrivacy Dir.

- ✓ The measures shall be *legislative* in nature
- ✓ only for a *limited* period
- ✓ where *necessary, appropriate* and *proportionate* within a democratic society
- ✓ to safeguard *national security, defence, public security* and the *prevention, investigation, detection* and *prosecution of criminal offences* or of *unauthorised use of the electronic communication system*



# Data retention & ePrivacy Dir.

- That means that MS's can retain more data according to Art. 15§1 ePrivacy Dir.





# Who can have access to these data?

- ❖ Art. 4 DRD: Data are provided only to the **competent national authorities** in specific cases and in accordance with national law.
- ❖ **Quid competent national authorities??**
- ❖ **List??** (Art. 29 WP asks for a list of designated law enforcement authorities)



# For how long?

- ❖ The data are to be retained for periods of not less than **six months** and not more than **two years** from the date of the communication. (Art. 6 DRD)



# Cost reimbursement

- ❖ Not included in the directive
- ❖ Commission: Proposal for a directive ⇒  
Reimbursement as state aid [Art.87(3)(b)ECT]
- ❖ Statement by the Commission:  
[The] reimbursement by Member States of **demonstrated additional costs** incurred by undertakings for the **sole purpose** of complying with requirements imposed by national measures implementing [the DRD] for the purposes as set out in the Directive may be necessary.



# Transposition

- No later than **15 September 2007**  
(15 (1) DRD)



# Transposition

- ☆ 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** until **15 March 2009**. (15(3) DRD)



# Transposition

- \* MS's shall notify the Council and the Commission to that effect by way of a **declaration** upon adoption of the Directive
- \* 16 MS's filed such declaration



# Thank you for your attention!

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