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Brussels, 14 July 2010

## **ARTICLE 29 DATA PROTECTION WORKING PARTY**

### **European Data Protection Authorities find current implementation of data retention directive unlawful**

**The European Data Protection Authorities (united in the Article 29 Working Party [WP29]) adopted during their meeting on 12 – 14 July 2010 a report on the European data retention directive 2006/24/EC. The report that results from a joint inquiry carried out by the data protection authorities, concludes that the obligation to retain all telecom and internet traffic data resulting from the directive is not applied correctly in the EU member states. Most importantly, service providers were found to retain and hand over data in ways contrary to the provisions of the directive. The provisions of the data retention directive are not respected and the lack of available sensible statistics hinders the assessment of whether the directive has achieved its objectives. The European Data Protection Authorities therefore call on the European Commission to take into account the findings of the report when taking the decision on whether or not to amend or repeal the Directive.**

The joint inquiry focused on security measures and preventions of abuse, compliance with storage limit obligations and the type of retained information. It showed that the directive has not been implemented in a harmonized way. Significant discrepancies were found between the member states, especially regarding the retention periods which vary from six months to up to ten years which largely exceeds the allowed maximum of 24 months.

Another important finding is that more data are being retained than is allowed. The data retention directive provides a limited list of data to be retained, all relating to traffic data. The retention of data relating to the content of communication is explicitly prohibited. However, it appears from the inquiry that some of these data are nevertheless retained. As to the internet traffic data several service providers were found to retain URL's of websites, headers of e-mail messages as well as recipients of e-mail messages in "CC"-mode at the destination mail server. Regarding phone traffic data it was established that not only the location of the caller is retained at the start of the call, but that his location is being monitored continuously.

Member states have scarcely provided statistics on the use of data retained under the Directive, which limits the possibilities to verify the usefulness of data retention.

The report in which the findings of the European Data Protection Authorities' investigation are laid down includes several recommendations for changes to be made to the directive. They entail increased harmonization, more secure data transmission and standardized handover procedures. Furthermore, the report states that no additional data retention obligations for the providers may be imposed by national laws. It also advocates reduction of the maximum retention period to a single, shorter term, reconsideration of the overall security of traffic data by the Commission, clarification of

the concept of "serious crime" at member state level and disclosure to all the relevant stakeholders of the list of the entities authorized to access the data.

This report will also be the contribution of the WP29 to the evaluation of the data retention directive 2006/24/EC carried out by the European Commission which is expected to be published in September 2010.

### **Background information**

The European Data Protection Authorities (the Article 29 Working Party on the Protection of Individuals with regard to the Processing of Personal Data) is an independent advisory body on data protection and privacy, set up under Article 29 of the Data Protection Directive 95/46/EC. It is composed of representatives from the national data protection authorities of the EU Member States, the European Data Protection Supervisor and the European Commission. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC. The Article 29 Working Party is competent to examine any question covering the application of the data protection directives in order to contribute to the uniform application of the directives. It carries out this task by issuing recommendations, opinions and working documents.

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