

EDRI-FFII-PI

DATA RETENTION: MOST IMPORTANT VOTES

A) Block No. 1 – compromise

Our recommendation: - (but **ADOPTED by the EP)**

- 52 and 65 directly contradict the European Data Protection Supervisor’s (EDPS) conclusions.
- 54 misrepresents studies (e.g. Erasmus study concluded “*impossible to say if retained data were of importance as proof in criminal cases*”)
- 55 removes follow-up committee. 58 reintroduces it without civil society members.
- 57 & 77 need content of Internet data (which 78 again forbids).
- 60 removes abuse safeguards.
- 64 misrepresents Council of Europe conventions.
- 70 extends the directive reach beyond impact assessment.
- 72 enables *constant tracking of every mobile phone*.
- 76 says no harmonisation of safeguards needed.
- 87 *allows extension of retention period beyond what directive says*.
- 89 turns review of necessity & proportionality into review solely to extend reach.

B) Am 69 – What kind of crimes can data be used for

Our recommendation: - (but **ADOPTED by the EP)**

This amendment *removes* the Commission requirement that the retained data must be used for serious criminal offences *such as terrorism and organised crime*, without providing a list of what the data can be used for.

In the UK traffic data can already be accessed in any investigation, and authorised by a variety of public agencies beyond policing. If we want harmonisation, this must be prevented. Otherwise, as the Commission has noted, *only partial harmonisation will be achieved and variations in practice, as the Council notes, will cause problems*.

C) Am 75 – Retention of unsuccessful call data

Our recommendation: - (but **ADOPTED by the EP)**

This amendment requires the retention of unsuccessful calls for both telephone and internet, and is *burdensome and unnecessary*. Even the Council was unable to come to an agreement on this issue so it is best that discretion is left to Member States upon extensive consultation with industry and consumer organisations.

We support the LIBE amendments (Am. 29) that ensure that Member States can choose whether it is necessary to collect and retain unsuccessful call attempts. The less data that is required to be retained the better as this will reduce the costs for consumers and industry.

D) Am 81 – Retention period of up to two years

Our recommendation: - (but **ADOPTED by the EP)**

The Commission's proposed *6-12 months was argued to be the maximum acceptable period by the European Data Protection Supervisor*. Research on data retention has shown that a three month retention period was adequate, though six months was considered optimal. Even for its Framework Decision the Council was unable to settle on a period of retention because of legal and technological constraints. The UK Presidency's 'case for data retention' outlined a number of situations (terrorism, kidnapping, murder, etc.) and *none of these situations required a retention period more than a few months*.

This will require keeping all records of our locations over a two-year period as well as records of all of our contacts and travels over that time. Never have the police had access to such data on our lives. *In accordance with legal advice from the Article 29 Working Party, the EDPS, and industry consultations, the proposed two year period is disproportionate.*

E) Ams 85 and 41=93 – Reimbursement of costs to industry

Our recommendation:

- **85: - (but **ADOPTED** by the EP)**
- **41=93: + (but **REJECTED** by the EP)**

85 removes harmonisation of reimbursement of costs of telecom providers, which *removes the legal basis of this directive (TEU art 95)*. 41=93 does the opposite.

Only EU industry and consumers will be forced to bear the costs of retention. Other countries have already rejected data retention, e.g. U.S. industry is not obliged to keep data for any period of time and instead have to adhere to 'preservation' requests for specific data on specific individuals in specific investigations.

This places EU industry and consumers at a disadvantage, *putting the Lisbon strategy at risk*. Only European consumers and companies will have to bear these costs, *damaging both consumer confidence and global competitiveness*. For instance, European companies that provide web-based mail services will lose out to competitors from the U.S. (Hotmail, Gmail) who may operate at lesser costs and *European consumers will be compelled to use these American English-language services instead*.

Finally, if Member States are compelled to cover the costs, they are more likely to introduce reduced-retention regimes (e.g. 6-months, no unsuccessful calls) because governments will have to bear the costs. *Costs-recovery is a balancing mechanisms on government over-reaching*.