[IE] Challenge to Data Retention Law

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At the end of 2005, the Minister for Justice in a late amendment to the Criminal Justice (Terrorist Offences) Bill added a provision requiring telecom operators to retain data on telephone, mobile and fax calls for a period of three years. Prior to that the requirement had been imposed by direction of the Cabinet, purportedly under a 1983 Act, rather than openly through specific legislation. The lack of transparency, the extent of the retention both in respect of the time period and the range of data have been criticised by successive Data Protection Commissioners (see IRIS 2002-4: 14), ISPs, Digital Rights Ireland (DRI), academics and the media. Arguments range from the inappropriateness and danger associated with the holding of data in case it is needed by police for any crime, to the possible misuse of disembodied data, the lack of safeguards, the technical unworkability of the provisions which require massive amounts of information to be retained because it is impossible to differentiate between various types of information, the costs involved, the need to protect the privacy and integrity of customer data and the fear that the manner of the introduction and substance of the provisions mark a major move towards the creation of a surveillance state. Concern was also expressed by DRI at the provisions of the Criminal Justice (Mutual Assistance) Bill, which proposed to use technologically outdated legislation (the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 to deal with requests for assistance from other States. At the end of July 2006, DRI gave the State an ultimatum to cease the collection of data or face a court challenge on the basis that the retention and storage breaches the Irish citizens' right to privacy, a right guaranteed by the Constitution (Article 40.3.1). The Government itself, although in favour of data retention, began a challenge to Directive 2006/24/EC in the European Court of Justice on 9 July 2006 under Article 230 of the EU Treaty on procedural grounds, arguing that a framework decision requiring unanimous agreement of all the Member States should have been the mechanism used.

Criminal Justice (Terrorist Offences) Act 2005

http://www.oireachtas.ie/documents/bills28/acts/2005/a0205.pdf

Criminal Justice (Mutual Assistance) Bill 2005

http://www.oireachtas.ie/viewdoc.asp?DocID=4699

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