[DE] Legal Affairs Committee Approves Compensation for Data Retention

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On 3 December 2008, the *Rechtsausschuss* (Legal Affairs Committee) of the *Bundestag* (lower house of parliament) approved the draft *Gesetz zur Neuordnung der Entschädigung von Telekommunikationsunternehmen* (*TK-Unternehmen*) *für die Heranziehung im Rahmen der Strafverfolgung* (Act on the reform of compensation for telecommunications companies providing assistance with criminal prosecutions - TKEntschNeuOG). Under the Act, companies will in future be entitled to flat rate compensation payments for costs they incur when carrying out surveillance orders and disclosing call or location data. The Act does not make provision for any reimbursement of the investment needed to acquire the relevant technology.

The reasons given for the Act explain that it has become necessary because of the significant increase in the number of data requests and surveillance orders addressed to telecommunications companies in recent years. In particular, the draft amends Art. 23 of the *Justizvergütungs- und Entschädigungsgesetz* (Court Payment and Reimbursement Act - JVEG), under which compensation for loss of earnings of telecommunications company staff was previously, like that of witnesses, limited to a maximum of EUR 17 per hour. The new rates are meant to take into account the unusual nature of the services provided by the telecommunications sector, which include a 24-hour stand-by service as well as measures that often involve more than simple data communication. The reimbursement of the resulting higher costs will therefore be improved.

In parallel with this, the Bundestag is also reported to be working on a rule for the reimbursement of investment costs relating to the acquisition of surveillance technology. Such a provision had already been called for by most of the experts who were involved in drafting the TKEntschNeuOG. However, several experts think that this expenditure should be reimbursed not under the JVEG, but independently of actual investigations, since it cannot be included in procedural costs, which are awarded against convicted parties under the rules of criminal procedure.

Gesetzentwurf BT-Drs. 16/7103 vom 13. November 2007

http://www.bundestag.de/ausschuesse/a06/anhoerungen/31_TKEntschNeuOG/01_Ge

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