[IE] New Bill on Data Retention

IRIS 2009-8:1/33

Marie McGonagle
School of Law, National University of Ireland, Galway

In July the Communications (Retention of Data) Bill 2009 was published. Its main purpose is to give effect to Directive 2006/24/EC on the retention of data. The Bill will allow service providers to retain fixed and mobile telephone data for a period of two years and Internet (access, e-mail and telephone) data for one year. Previously the period in respect of fixed and mobile telephony was three years. Section 2 makes clear that the Bill does not apply to content, thus giving effect to Article 1.2 of the Directive. The Data Protection Commissioner is designated as the national supervisory authority in accordance with Article 9 of the Directive. Service providers may not access data retained in accordance with the provisions of the Bill, except at the request and with the consent of the person to whom the data relate or for the purpose of complying with a disclosure request, in accordance with a court order or as may be authorised by the Data Protection Commissioner (Section 5). A disclosure request may be made by a member of *An Garda Síochána* (the Irish police force) not below the rank of chief superintendent, where s/he is satisfied that the data are required for the prevention, detection, investigation or prosecution of a serious offence (defined as an offence punishable by a term of imprisonment of five years or more or an offence listed in Schedule 1 of the Bill); for the safeguarding of the security of the State; or the saving of human life. The fact that disclosure requests can be made only in respect of serious offences is a significant change, as previous legislation enabled a disclosure request to be made in respect of the investigation of any offence (see IRIS 2006-9: Extra). A member of the Permanent Defence Force not below the rank of colonel can also make a disclosure request under the new Bill, but only if the data are required to safeguard the security of the State, and a member of the Revenue Commissioners not below the level of Principal Officer may likewise make a request but only in relation to a revenue offence, as defined in the Bill (Section 6). Service providers are obliged to comply with any such disclosure requests (Section 7). The Bill specifies that the Minister for Justice, Equality and Law Reform shall prepare a State report on all disclosure requests made during the relevant twelve-month period, which will then be submitted to the European Commission in accordance with Article 10 of the Directive. A complaints procedure is also provided for (Section10), as is the involvement of a High Court judge in, for example, reviewing the operation of the Bill (Section 11).

The new Bill followed a decision of 10 February 2009 of the European Court of Justice, dismissing Ireland’s attempt to have Directive 2006/24/EC annulled on the ground that it was not adopted on an appropriate legal basis.

© European Audiovisual Observatory (Council of Europe) 2026

Text of Communications (Retention of Data) Bill 2009 and Explanatory Memorandum

http://www.oireachtas.ie/viewdoc.asp?DocID=12468&&CatID=59

Ireland v European Parliament and Council of the European Union, Case C-301/06, Judgment of ECJ, Grand Chamber, 10 February 2009, OJ C 82 of 4 April 2009, p.2

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006CJ0301:EN:HTML

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026